JUSTICE OF THE PEACE & LOCAL GOVERNMENT REVIEW

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Official & Classified Advertisements, etc.

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NOTIFICATION OF VACANCIES ORDER, 1952

The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. *Note :* Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

COUNTY BOROUGH OF BOLTON

Appointment of Senior Assistant Solicitor

APPLICATIONS are invited for the appointment of Senior Assistant Solicitor in the office of the Town Clerk and Clerk of the Peace. The salary will be £1,205, rising by increments of £52 10s. and £50 to £1,307 10s. per annum.

Candidates must possess considerable local government experience and have a sound knowledge of all aspects of the legal and administrative work undertaken in a Town Clerk's Department.

The appointment is subject to termination upon three months' notice in writing by either side and to the successful candidate passing a medical examination.

Applications, stating the names of three persons to whom reference may be made, must be received by me not later than December 28, 1955.

Canvassing will disqualify.

PHILIP S. RENNISON,
Town Clerk.

Town Hall,
Bolton.

GLOUCESTERSHIRE COUNTY COUNCIL

Assistant Solicitor

APPLICATIONS invited from Solicitors for the whole-time established post of Assistant Solicitor on the staff of the Clerk of the County Council. Salary scale Grade E (£1,412 10s. × £52 10s.—£1,622 10s.).

Candidates must have had good experience in advocacy and be capable of instructing Counsel. The person appointed will, in addition, be required to undertake general legal work. Knowledge of local government administration desirable but not essential.

The appointment is superannuable, subject to medical examination, and determinable by three months' notice, in writing, on either side.

Applications, giving full personal details, particulars of education, qualifications and experience, and the names of two referees, to reach me by January 7, 1956.

Canvassing will disqualify.

GUY H. DAVIS,
Clerk of the County Council.

Shire Hall,
Gloucester.

URBAN DISTRICT COUNCIL OF HARLOW

Appointment of Deputy Clerk of the Council

APPLICATIONS are invited from Solicitors with appropriate local authority exeprience for the post of Deputy Clerk of the Council. The salary, £1,150 per annum, rising by annual increments of £52 10s. to £1,307 10s., and the Conditions of Service will be in accordance with Scale B of the Joint Negotiating Committee for Chief Officers of Local Authorities.

It is anticipated that housing accommodation can be made available for the successful candidate.

Application forms are available on request, and should be returned not later than first post on Monday, January 2, 1956.

D. F. BULL,
Clerk of the Council.

"Bromleys,"
Netteswell Road,
Harlow, Essex.
Telephone—Harlow 25320/1.

METROPOLITAN BOROUGH OF LAMBETH

Appointment of Deputy Town Clerk

APPLICATIONS are invited for the appointment of Deputy Town Clerk. Applicants must be Solicitors and have had a wide and varied experience in Local Government administration, law and practice.

Salary: £1,675 per annum rising by annual increments of £52 10s., to £1,937 10s.

Particulars and conditions of appointment and form of application from Town Clerk, Lambeth Town Hall, Brixton Hill, S.W.2. Closing date: December 31, 1955.

CITY AND COUNTY BOROUGH OF STOKE-ON-TRENT

Deputy Clerk to the Justices

APPLICATIONS are invited from Solicitors for the post of Deputy Clerk to the Justices at a salary of £1,078 15s. rising by £50 per annum to £1,228 15s. (Local Authority Conditions, Grade A of Chief Officers' Scales).

Applications, with the names of two referees, must reach me not later than December 24, 1955.

C. WHITE,
Clerk to the Magistrates' Courts Committee.

BOROUGH OF HARROW

Appointment of (a) Assistant Solicitor (b) Legal Assistant

APPLICATIONS are invited for the appointment of (a) Assistant Solicitor at a salary in accordance with A.P.T. Grades V/VI (£750—£1,000 per annum, plus London weighting) and (b) Legal Assistant at a salary in accordance with A.P.T. Grade II (£560—£640 per annum, plus London weighting).

Candidates for post (a) should be experienced in conveyancing and advocacy; and experience in local government, including planning law and committee work, is desirable.

Candidates for post (b) should have had general legal experience in a solicitor's office.

Forms of application are obtainable from the Town Clerk, Harrow Weald Lodge, Harrow, Middlesex, to whom they should be returned not later than December 31, 1955.

COUNTY BOROUGH OF BRIGHTON

Appointment of Chief Constable

APPLICATIONS are invited for the above appointment at a salary of £1,650 per annum rising by annual increments of £50 to £1,800 per annum, together with a car allowance of £225 per annum, a rent allowance and other usual allowances.

The appointment is subject to the Police Regulations and to the passing of a medical examination. The successful candidate will be required to reside within the Borough.

Applications, on forms obtainable from my office, in an envelope endorsed "Chief Constable," must be received by the undersigned not later than January 14, 1956.

Canvassing in any form will disqualify.

W. O. DODD,
Town Clerk.

Town Hall,
Brighton, 1.
December 3, 1955.

Justice of the Peace
and
LOCAL GOVERNMENT REVIEW

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REPORTS

NOTES OF THE WEEK

Approved Schools and the Alternatives

The decline in the number of approved school orders may be attributed to a number of causes, some of which may be only temporary. Some schools have been closed, but we have no doubt that the schools remain a valuable part of the machinery at the disposal of the courts. The annual report of the London Police Court Mission contains some observations on this subject.

While agreeing that the decrease in the number of approved school orders is due in part to a welcome reduction in the number of juvenile offenders, the report calls attention to other contributing causes. Among new methods of treatment introduced by the Criminal Justice Act, 1948, is the detention centre, and courts are making use of them, where they are available, for some young offenders who might be sent to approved schools. We think, however, that there is something in the statement that it is too soon to assess the value of this form of treatment and that probably longer training may be found necessary for a number of boys so detained, and in due course they will be sent to approved schools or to borstal.

Another factor that has contributed to a less use of approved schools is the change in the law which made it no longer necessary for the consent of a local authority to be given to the making of an order committing a juvenile to the care of that authority as a fit person. Many courts are making fit person orders in cases where the local authority would not have been willing to accept the position if it had been able to refuse. Here, again, the London Police Court Mission thinks it too soon to estimate the results of the new policy, but is of opinion that some young people who have shown that they need the training which approved schools can provide, are not receiving it.

The declared policy of the London Police Court Mission is to use its resources to meet the demands of a changing situation, thereby maintaining its tradition of service to the courts, and to adapt the nature of its service to changing conditions in the light of experience and experiment. It is to be remembered that the mission is itself responsible for two approved schools, and in connexion with these every effort is being made to make contact between the school and the family and to improve the home to which the boy or girl will return. This is in conformity with present policy.

Homes and Hostels

The report goes on to point out that the closing of approved schools seems likely to increase the need for more probation homes and hostels of good standard. Experience of work in this field has convinced the Mission that excellent results can be achieved only where homes and hostels follow the tradition of the best approved schools and where staff of the same high quality can be secured. The comment is made in the report that it is not easy to achieve this standard when the Home Office gives less favourable financial support to approved homes and hostels than to approved schools.

Our own view is that there will always be a place for approved schools as well as for homes and hostels, and that the best results will be obtained by the exercise of a wise discrimination between the needs of one case and another.

The report demonstrates the wide scope of the Mission's activities, especially in the maintenance of a number of institutions. It started, says the report, as a venture of faith to bring friendship, encouragement and practical aid to those in trouble in the magistrates' courts. We can vouch for it that the same high aims are being pursued, with great benefit to the community, at the present day.

Should Fines be Made to "Hurt"?

A north country magistrates' court had recently to decide, according to a report in the local press, what instalments a lorry driver should pay when he was allowed time to pay a fine of £20, with £6 6*s.* 3*d.* costs, for careless driving.

He was said to be earning £8 a week and to be married with two children. His rent, he said, was £3 per week. He offered to pay 10*s.* per week. The magistrates refused this offer, and the clerk is reported as saying: "This is to be a penalty, not a convenience." The magistrates decided that the defendant must pay £2 per week.

We do not propose to comment on the figures in this case, because it was essentially for the magistrates concerned, who were in possession of all the facts, to decide what was appropriate. We do say, however, that it is right that the difference between a fine imposed for an offence (especially if it be an offence of some gravity) and an obligation voluntarily undertaken, such as the buying of a television set on hire-purchase terms, should be emphasized. There is a tendency for some defendants to take the attitude that when time is allowed for payment of a fine the time allowed and for the instalments required to be paid should be such that making the necessary payments does not interfere unduly with the defendant's normal routine and economy.

Section 31 (1) of the Magistrates' Courts Act, 1952, requires a court, in fixing the amount of a fine, to take into consideration, among other things, the means of the defendant so far as they appear or are known to the court. The fact remains, however, that a fine is, and should be meant to be, a punishment. If the offence is a minor one the punishment may be of little consequence. But if the offence is in any way a serious one payment of the fine should involve a realization on the part of the defendant that he is being punished for that offence and that he is not merely paying off a somewhat inconvenient debt.

Peeping Tom

This has become a recognized description of the curious type of man who finds enjoyment in trying to spy on women and girls in bedroom or bathroom in the hope of seeing what he is not meant to see. Usually, if he is at all persistent in loitering in a particular locality, he is caught and brought before a magistrates' court, where he is bound over, with or without sureties, to keep the peace and be of good behaviour. Sometimes he is fined for insulting behaviour.

What on the face of it seems an extraordinary way of dealing with such a situation is reported in *The Times* of November 29. It appears that at a meeting of the Birmingham education committee a member stated that £5,000 had been spent in five years in providing a patrol for a teachers' training college where 200 girls were in training. The member admitted that the men employed on patrol had other duties, but he stigmatized the procedure as showing an old-maidish attitude, and said that in a private house the remedy would be to draw the curtains.

Curtains and blinds certainly strike anyone as the simple remedy for what can be a very real annoyance. In case of persistence, no doubt the police would take steps to detect the offender and bring him to court. A constant patrol seems so unusual and so expensive that we feel that there must be some facts of which we are not aware. Local authorities are not accustomed to spend public money quite unnecessarily. We should like to hear more about this matter.

Private Homes in New Towns

In reply to a recent question by Mr. Græme Finlay, M.P. for Epping, the Minister of Housing and Local Government disclosed that up to June 30, 1955, 167 houses and 353 sites for houses had been sold to private owners in New Towns. In addition, sufficient land for 880 houses had been sold to private building developers.

These figures show that New Town Development Corporations are bringing into effective force the precept that New Towns should not be one-class estates like the out-county housing estates of the London County Council. Such estates lacking a true cross-section of the community and not being equipped with shops, cinemas and schools of their own have never acquired a proper sense of civic unity and have tended to be characterless dormitories. Notwithstanding increased subsidies, rent increases due to a higher rate of interest on loans tend to be considerably higher in New Towns which have no pool of older houses over which to spread the increases and which were built at the most expensive period of building. In one New Town, for example, an increased rent of about 9*s*. a week would result from the recent rise in interest rates of 1½ *per cent*.

This being so, the prospect of buying a house of one's own has considerably greater attractions than before. The population structure of many of the New Towns, moreover, is such as to indicate a majority of people in prosperous employment.

The demand for garages for motor cars is very high, television sets and washing machines are present in abundance and the level of national savings is above average.

In Crawley, for example, the average weekly wage is nearer £15 a week than £13, and in many cases, the wife is also out at work and bringing extra wages into the house. Under such circumstances it is scarcely surprising that a good looking three-bedroomed house for about £2,000 is selling like "hot cakes."

In Harlow the Development Corporation are now developing a scheme of 90 houses for sale at Upper Park, Little Parndon, an attractive site in the development area.

The site concerned is only a short distance from the town centre where there will eventually be 300 shops and departmental stores, but it is completely enclosed by woodlands and playing fields. Gardens are generous and special attention has been given to the question of privacy.

Eleven types of house are being built. The majority have three-bedrooms and are semi-detached but the complete range covers both two and four bedrooms including a number of detached houses and two bungalows. There are also two plots allocated for private development. All the houses have brick-built garages attached except for two groups which have separate ones close by. The price range runs from £1,900 to £3,050 and the houses are sold on a long leasehold of 999 years with a £26 per annum ground rent. Alternatively, a reduced ground rent can be arranged with a corresponding increase in the purchase money.

All services are provided and there are no road charges.

Rate Poundage

More than once the Chancellor of the Exchequer has warned local authorities of the risk of thinking that they will have more money to spend when the rateable values of many properties are increased under the new rating procedure. Generally, the burden of rates has been gauged in the past by the amount in the pound of the rate levied but properties in some areas have been notoriously underrated as compared with similar properties in other areas. This will not be the position when the new valuations are made. Local authorities are now framing their budgets for next year. They are always glad to know that the total rateable value has increased and that the product of a penny rate has increased. Expenditure continues to rise but it seems possible that much of the higher cost of local government services can be met without an increase in the rate poundage. This is not, however, enough. A ratepayer will know as soon as the new valuation has been made whether his assessment has been increased or reduced. But he will not know how the revaluation affects him until the rate poundage is known. Outside county boroughs this will depend mainly on the county council precept which must be covered by the rate levied by the borough or county district council.

There is a general feeling that rate poundages may not be reduced in the first year of the new valuation to the full extent made possible by increases in rateable values. It was pointed out in a circular issued by the Ministry of Housing and Local Government, on November 18, 1955, that it may be unusually difficult for rating authorities to decide what rate in the pound will be required, particularly in view of the impossibility of forecasting the extent to which objections to the new values may be successful. The Minister is sure, however, that rating and precepting authorities will not allow themselves to be unduly influenced by this factor, for unnecessarily high rate poundage will tend to increase the number of appeals. We hope all concerned will have this continually in mind and that the Minister's confidence may not be misplaced. It would be very easy for the opportunity to be taken to increase expenditure, some of which may be very desirable but not absolutely essential, and give much prominence to the fact that the rate in the pound has not been increased when probably it might have been reduced. Another circular issued by the Ministry on November 23 refers to representations which have been made that the effect of the revaluations will be to impose heavy additional burdens on particular classes of ratepayer, notably the occupiers of retail shops. The Minister has given an undertaking to Parliament that the Government will review the position as soon as the effect of the revaluation can be fully measured.

THE CLERK'S NOTES

By F. G. HAILS, *Solicitor, Clerk to the Dartford Justices*

When, in our article on Appeals to Quarter Sessions (119 J.P.N. 600) we wrote: " . . . it is perhaps strange that many quarter sessions courts demand notes of magisterial proceedings, so that they can have some knowledge of what has happened previously, and it would be interesting if some party to an appeal were to challenge the proceedings on the ground that the court had taken upon itself to inquire into what had taken place before the justices," we did not expect so prompt a reply as was given in *R.* v. *Recorder of Grimsby, ex parte Fuller* [1955] 3 All E.R. 300; 119 J.P. 560.

As this decision has already received editorial notice (119 J.P.N. 712) we will not comment upon it further, save as an introduction to our present topic. For some years past there has been an ever increasing demand for copies of the clerk's notes, and the *Grimsby* case is, so far as we know, the first pronouncement as to who is not entitled to copies: this is all the odder when we consider that except in domestic proceedings the clerk is under no duty, statutory or imposed by judicial decision, to take a note at all.

The series of cases which hold that a clerk must take a note in domestic proceedings, and supply copies to those contemplating appeal are too well known to need recapitulation. Perhaps we may recall that recently, in *Hobby* v. *Hobby* [1954] 2 All E.R. 395; 118 J.P. 331, the Divisional Court expressed the opinion that such notes should be made in a bound book. In an editorial ((1954) 118 J.P.N. 447) it was pointed out that this opinion did not lay down a new rule of procedure, and that unless and until rules are made under Justices of the Peace Act, 1949, justices' clerks " may feel sure that there is no obligation on them to alter their present ways, so long as they are proper and reasonable." The difficulty at present is to decide what is proper and reasonable in connexion with notes, and in the absence of any rule one can only hazard opinions.

The first question we must ask is: " should there be a note? " and we think that the answer to this is an emphatic affirmative. It is true that there is nothing in the Magistrates' Courts Rules, 1952, to say that there shall be, but we have not the slightest doubt that were the question raised in the Queen's Bench Divisional Court, as it might well be if there were to be any dispute as to what was done or said before the justices, the clerk's note would probably be called for: if no such note had been taken it is almost certain that there would be criticism, and a judicial direction that one should always be taken. In such appeals as go to the Chancery Division under the Guardianship of Infants Acts, 1886 and 1925, a Practice Direction ([1955] 1 All E.R. 784) has already been given that a statement of reasons for decision must be lodged on the appointment for directions. So far there is nothing said about the clerk's notes, but if at any time such notes were to be refused, having been required on the appeal, we will again venture to forecast that a direction similar to that so well-established in matrimonial cases would be made.

Having expressed our opinion that a note is advisable, we must briefly consider its form. There are, we believe, clerks who try to condense the note on to the back of the information or complaint: we can hardly see such a practice obtaining judicial approbation, and whilst it is obviously impossible to take a verbatim note, we think that anything which did not make an honest attempt to record everything material would also call down the wrath of the High Court. It is impossible to define, by rule or otherwise, the contents to the note, and our counsel is, if in doubt, play for safety by elaboration rather than condensation.

We should like to consider here who is entitled to see the note of a case and to call for copies. If our experience is a criterion, the copying of notes presents a major problem in a magisterial office. In the first place, not every note is easy to read, but even if it is in copper-plate handwriting the fee of 4*d.* per folio of 72 words does not pay for the time of the copy-typist. After all, if a solicitor has to make further copies he gets 6*d.* per folio ! Then again, the demand for copies is constantly increasing. In matrimonial cases the clerk is bound to supply copies if appeal is contemplated, and is wise to do so where either party to the proceedings before his justices subsequently wishes to present a divorce petition. In road traffic cases not only does the defendant or his solicitor frequently ask for a copy note, but insurance companies, solicitors for witnesses who wish to claim damages, and even trade unions, add to the queue, so that the clerk may find it difficult to keep pace with the demand. There is the occasional party with a bee in his bonnet, who for years after conviction flits from lawyer to lawyer, trying " to get the case re-opened," each lawyer making a fresh request for a copy of the notes of the original hearing. We have no doubt that members of Parliament have on occasion asked for copy notes, and should not be surprised to receive a request from the press. There seems to be a general impression abroad today that the clerk's notes are public property, but it is doubtful if this is really the case. We do not know of any case law on this subject, but it is our opinion that the only persons entitled to demand a copy of the notes are parties contemplating appeal, or their legal advisers, and possibly, parties to the case who are contemplating civil action involving the same facts. Possibly a

member of Parliament would be entitled to a copy if he required it for the purpose of a parliamentary question. In road traffic cases we have made a rigid rule not to supply notes to insurance companies, and if a witness is contemplating a running-down action against the defendant we will not supply copy notes without the consent of the informant and the defendant being first obtained. It is indeed surprising how many solicitors in running-down cases find it easy to get on without the notes when they are asked to obtain these consents.

Our reasons for this attempt to stem the flood are not perhaps based entirely on the ethical aspect of the matter, but because we have found that to accede to all the demands would be incompatible with the performance of the essential work of the office. Obviously we cannot ask for an extra typist to copy notes, for this work is far from remunerative, as we have said. Altogether we think that the time is ripe for the whole question of justices' clerks' notes and the definition of persons entitled to copies thereof, to be considered, preferably by the Rule Committee: and at the same time might we suggest, in the interest of the public purse, that clerks should be allowed the same copying fee as is a solicitor in litigious matters.

BIRMINGHAM SUPERANNUATION

In an article at p. 717, *ante*, we examined some aspects of a controversy which had arisen with regard to the Birmingham local superannuation scheme. We return to the subject partly in the light of subsequent events (the Birmingham city council having rescinded its previous decision a few days after our previous article was published) and partly because there are certain aspects of the matter we did not touch upon in our previous article.

When discussions were opened in 1951 on proposed amendments to the Local Government Superannuation Act, 1937, a memorandum on the subject was prepared by the Ministry of Housing and Local Government which spoke of the possibility of reduction, or even elimination, of local Act variations of the general local government superannuation legislation. There was nothing new about this suggestion—anyone acquainted with the history of local government superannuation would agree that, on the grounds of actuarial stability and administrative convenience, such a course has been regarded in many quarters for some years as desirable if not inevitable—but always subject to the benefits under the general legislation being superior to the benefits obtained under local schemes. It follows, almost as an invariable course, that some local schemes are many years ahead, in degree of benefits, to those obtained under general legislation. Obviously, also, there must be some difference of opinion as to what are better benefits: in other words, a local scheme may have more advantageous benefits in one direction than would be provided under the general legislation, while in other directions the benefits under general legislation are superior. It would be true to say that such was the case with Birmingham. However, to continue with a brief history behind the Act of 1953—when a meeting of the local authorities' associations (and N.A.L.G.O.) with representatives of the Ministry took place on October 17, 1951, to discuss the (previously mentioned) memorandum, the local authorities' representatives considered that the " reduction, or even elimination, of local Act variations " would lead to the further diminution of the powers of local authorities, and it was thought by them that the next step would be a provision to prevent non-uniformity. It was agreed, however, that the Minister should consider the advisability of approaching individual local authorities direct.

At the first meeting of the working party held on November 21, 1951, the local authorities' associations saw objections to the proposal that the new scheme of benefits should be prescribed by regulations rather than included in the Bill. For the Ministry, it was agreed that the department's intention throughout had been to work in the closest harmony with N.A.L.G.O., and if, as they anticipated, an agreed scheme of benefits was arrived at, there seemed no great advantage in including the agreed provisions in the Bill rather than in regulations. The principal reason given by the Ministry for the preference for regulations to prescribe benefits rather than for these to be embodied in the Bill was the limited time available for drafting the Bill. This was accepted, though with reluctance, by the local authorities' associations, who suggested that the Bill should at least make it clear that the new benefits should be such as would place no extra burden on superannuation funds, and that it should include specific provisions as to title to, and the scale of, benefits which would normally apply, even if regulations were required to deal with specific cases. It is equally clear, however, as we said in our earlier article, that Parliament would have preferred, when dealing with the Bill, to have relied upon the modern method of empowering a Minister to fix benefits by regulation: quite apart from the reason given by the Ministry as to the time available to parliamentary draftsmen, but probably more important, is the limited amount of parliamentary time itself, available to discuss in detail Bills of this nature.

We move from here to the debate on the second reading of the Bill, where Miss Margaret Herbison, on the subject of cl. 3, asked the Minister whether the clause meant that the Minister " is going to require of local authorities . . . whether or not their scheme is better than what is being introduced, they make their scheme conform with it? If so, there will be a great deal of heart-burning amongst local authority employees " and, later, " Has the Minister power to compel local authorities to modify, to adapt, or to repeal the local Act so that it may conform with the regulations? "

Replying for the Minister, Mr. Marples said: " I should say the Minister has," and suggested the point should be raised at a later stage in the progress of the Bill, and later, in the committee stage, Mr. Glenvil Hall asked the Minister to explain what cl. 3 really did. In his reply the Minister (Mr. Macmillan) said: " The purpose of this Bill will be to level up and not to level down," and later, " If there are local peculiarities, or small points that are ineffective one way or the other, but which suit local considerations, they will not be affected. If the benefits are above the minimum, we say 'Good luck to them; let them stay.' That was the intention of the clause." We think it clear that Mr. Macmillan was speaking in relation to local Act schemes in the ordinary sense, as defined in the Act of 1937, not of an extrinsic matter such as a fund not maintained by a local authority.

As we said in our earlier article, cl. 3 (4) of the Bill, now s. 3 (4), could not possibly refer to the same matters as cl. 3 (3), and any parliamentary agent watching the Bill must have been put on inquiry. We doubt whether there was any delusion in the

minds of the standing committee concerning the effect of subs. (4)—even granted that a lay Minister was addressing a lay committee on a complicated clause, so that this cannot be said with certainty.

We now come to deal with the position which has arisen with regard to Birmingham. In a letter from the Ministry to the town clerk dated November 22, 1954, it was stated, *inter alia*, that "s. 3 (4) was included in the Act primarily to deal with your fund and a similar fund operated by the Manchester corporation, with their discontinuance in view." As we said in our earlier article, it is difficult to see any purpose in the subsection if it was not intended to ensure that the local authorities concerned would at least look into the question of winding up such funds—so, thus far, we are with the Ministry—yet if this subsection was included as the result of departmental policy (as would appear to be confirmed from the extract we have quoted), it is to be wished that either the Minister or his parliamentary secretary could have so informed the standing committee in categorical terms—for although, as we have said, we doubt whether the standing committee could have been under any delusion about its effect, there were protests by two members of the committee at the speed in which the Bill was being considered, and it is at least possible that the implications of the clause were not fully understood. In the course of subsequent events, this has been asserted strongly by members of Parliament and others.

The general implications of the Birmingham controversy, however, we left virtually untouched in our previous article, and we deal with them here since they seem to require fuller investigation. To go over the general ground. The Birmingham corporation, in 1934, entered into a trust deed with the Birmingham Municipal Officers' Guild to establish the Birmingham Municipal Officers' Widows' and Orphans' Pensions Scheme. The scheme provided for payment of pensions to the widows and orphans of male officers in the event of death of an officer in the service of the corporation, and cover in the event of death after retirement could be provided at the option of the officer concerned. Contributions are payable up to the age of 65 and membership and payment of contributions also continue in the event of premature retirement before 60 on incapacity. In such a case the pensioner continues to enjoy the cover provided by the scheme without any age limit. Membership is obligatory for male officers under 30, at one *per cent.* of salary for those under 27, at 1½ *per cent.* between 27 and 30, and is optional for officers over 30, at a contribution rate such as the committee of management may prescribe. An individual officer who has at no time put the fund at risk before he ceases to be a member of the fund is entitled to the repayment of his contributions. The corporation staff earning in excess of £800 are excluded from the scheme. The fund is administered by the corporation free of charge, but inasmuch as it was created apart from legislation, though it was afterwards made obligatory by a local Act, and inasmuch as the corporation do not pay contributions to the fund or guarantee its solvency, it is not a local Act scheme within the meaning of the Act of 1937 and the Act of 1953. This is a vital point, for the understanding of s. 3 of the Act of 1953. The fund is in a strong financial position, and the management committee consists of three members each of the corporation and the Birmingham Municipal Officers' Guild.

The Act of 1953 and subsequent regulations have now made general provision for widows' pension cover in the event of death during service, but this differs from the Birmingham scheme in that, *inter alia*, under the general legislation, widows' pensions do not apply in the event of death before completing 10 years' service and that no provision is made for orphans' and children's pensions. Under the Birmingham scheme, widows' and children's pensions become payable immediately following the death of a member, however soon that member becomes a member of the scheme. Against that, under the Act of 1953, widows' pensions in some instances (generally for the older employee) are higher than under the Birmingham scheme.

So, as will have been seen, there are certain obvious advantages to be gained by the Birmingham guild in retaining their scheme (and it should be here mentioned that it has never been proposed to deprive existing members of these advantages)—although it could be argued that in some respects, the scheme falls below the level of benefits prescribed under the general legislation. Following the Act of 1953, and regulations made thereunder, with its benefits granted to the widows of local government officers, it was the duty of the corporation to consider whether they would either discontinue, modify or adapt the existing scheme. This, the corporation did, in June, 1954, when its finance committee considered a joint report from its town clerk and city treasurer recommending that the joint scheme should cease to be compulsory to new employees as from the coming into force of the 1953 Act code of benefits. It had previously (in June, 1951) been decided by the corporation's actuary that if the scheme were made optional, the slight risk to the fund was small enough to be ignored—but the June, 1954, resolution did not finalize the matter, since this was "subject to the observations of the guild." The management committee and the guild had not, according to papers supplied to us last month, been consulted by the corporation up to this stage. On July 15 of the same year, the Ministry were informed (before the observations of the guild had been received) that it was the intention of the corporation to amend the scheme so that it would not be open to their employees entering the service after October 1, 1954. On August 13, 1954, the guild submitted proposals to make the membership optional for such employees, and on September 24 the finance committee appointed two of its members to discuss the matter with representatives of the guild, to report back. Before such discussions took place, however, on October 19, 1954, a preliminary draft of an amending scheme was submitted to the Ministry. On October 25, the meeting between representatives of the corporation and the guild took place—and the guild were informed, *inter alia*, that the Ministry were opposed to the scheme remaining open to new entrants. It was agreed, however, that existing officers should have the right to opt out of the scheme, and that all eligible new entrants should have the option, whether or not to enter the scheme. On October 28, at a further meeting, the guild's representatives were informed that their latter base of agreement would have to be reconsidered because of the Ministry's firm view that the fund should be closed entirely to new entrants. A compromise solution was eventually decided upon, the main point of which was that there should be a trial period of three years. On October 29, 1954, the finance committee approved the gist of the previous agreement between the representatives of the guild and the finance committee, as to the optional nature of the scheme for existing officers, and a trial period of three years for new officers. The guild were subsequently informed that the Ministry had reaffirmed on two occasions (November 1 and 22, 1954) that the Minister would not be prepared to confirm a scheme giving new entrants an optional right to enter the scheme. In other words, the guild and the corporation were, up to a point, in general agreement against the Ministry. In their letter of November 22, the Ministry use the phrase we have already quoted "s. 3 (4) was included in the Act primarily to deal with your fund and a similar fund operated by the Manchester corporation, with their discontinuance in view." The guild asked for a further opportunity to meet representatives of the

finance committee (which apparently was not, at that time, acceded to) and decided to take other advice. On November 27, 1954 (a matter of four days after the contents of the Ministry's letter had been communicated to them) the guild were informed that the finance committee had decided to authorize the making of a draft scheme closing the existing scheme to entrants from October 1, 1954. On February 11, 1955, the town clerk wrote to the guild with a copy of the draft scheme to be submitted to the Minister for consideration, which scheme was approved by the city council on March 8. No meeting of the management committee had been convened—technically, at any rate, its consent to any amendment to the scheme was not necessary after the Act of 1953: we repeat " technically."

On March 21, 1955, the guild wrote to the Ministry protesting that they were not being directly consulted in relation to the proposed amendments to their own scheme, and also to the town clerk asking for copies of correspondence which had passed between the town clerk and the Ministry in connexion with the scheme. On March 23, the Ministry invited representations to be submitted forthwith in writing on the scheme, and saying " Your guild were presumably consulted on the scheme in question through the corporation on the Ministry's behalf in accordance with the Minister's request to the corporation, which they accepted." From this, an inference could be drawn that the Ministry were not aware of the views of the guild several months after the Ministry had refused to agree to the wish of both corporation and guild that the scheme should remain open for a trial period of three years. On March 25, the town clerk refused the guild's request to suppy copies of correspondence with the Ministry in connexion with the scheme. On April 7, 1955, the guild wrote to the Ministry summarizing their representations and asking for a deputation to be received, and on April 28 a meeting took place—five months after intimation of the Minister's unwillingness to give effect to the finance committee's proposal that membership of the fund should be optional for a trial period of three years. On July 20, 1955, in reply to Mr. Basil Nield (who had raised the matter on April 6, with the new Minister, Mr. Sandys, on behalf of N.A.L.G.O.), the Parliamentary Secretary (Mr. William Deedes) replied to the effect that he had had some sympathy with the suggestion of the guild that the fund should remain open to new entrants on an optional basis, but before deciding in this sense, which would have meant over-riding the decision of the corporation, he obtained further information from the town clerk on the subject, and in the light of that information (which showed, *inter alia*, that 45 *per cent.* of the members of the scheme had given notice of their intention to withdraw and elect to take the new benefits, with resultant weakening of the fund) decided, against his initial inclination, to agree to the confirmation of the corporation's scheme. Since the suggestion of Mr. Deedes having to over-ride the decision of the corporation indicated a misunderstanding (not of the position, but of events leading up to that position, *see supra*), Mr. John Edwards (in place of Mr. Nield, who was in hospital) took the matter up with the Minister on behalf of N.A.L.G.O. The papers now before us indicate, however, that at this stage he did not direct himself so much to the merits of the Birmingham case, as to the discussion on cl. 3 of the 1953 Bill when it was before the standing committee. He stated that, following consultation with Mr. Glenvil Hall and Mr. Robert Jenkins, all three were of the impression that the Minister had been implying the continuation of existing schemes and of any special local arrangements. His contention was, indeed, the argument we have already summarized. If we may translate it into the technical language of the Act, it was that " supplementary " benefits, " in augmentation " of those available under the general law, provided " in pursuance of a local Act," fell within the words used by Mr. Macmillan in committee, not less than those " similar " (to the general law benefits) " conferred by " a local Act.

The Minister, in reply on September 12, agreed that if he were guilty of acting in breach of an undertaking given by Mr. Macmillan (his predecessor), it would be a serious matter —but he could not agree that this was the case. Upon this we are at one with him, and it was to this point of *bona fides* that our previous article was mainly directed—but here we have given what we consider to be a comprehensive account of the background to this controversy. A few days after our previous article appeared, the finance committee of the corporation reversed its previous decision, and the whole matter is now, presumably, where it started.

Having said all this (which retracts nothing from what our previous article was principally directed to show), on general terms, we think that the guild have a justifiable cause for complaint (although we would have wished that that complaint had not taken the form of an accusation against Ministers) against both the corporation and against the Ministry. Whatever the merits (and demerits) of the fund as at present constituted, the element of consultation is surely of vital importance. Here we have a fund which has been built up over the years out of the contributions of its members, without any rate contribution other than the relatively small one of the cost of administering the scheme, and the first its members know about a scheme affecting their own fund was after the Ministry had written to the corporation informing them (as we have already quoted) that s. 3 (4) had been included in the 1953 Act primarily with the discontinuance in view of that fund. Granted that as yet the Minister has taken no final decision on the future of the existing scheme, and granted that he has (in our opinion) acted in no way contrary to the intentions of Parliament, we think there cannot but be an impression by the guild that this issue has been decided in advance and that consultation (even although it had subsequently taken place) was, to all intents and purposes, virtually meaningless. So far as the corporation is concerned, what we have recounted largely speaks for itself, and we think (having perused the correspondence most carefully) that the Ministry seems to have been under the impression that full consultation between the corporation and guild had taken place before it (the Ministry) was brought into it in the first instance. In short, we believe that all this has been, to quote our previous article's heading, " An Unfortunate Misunderstanding."

ADDITIONS TO COMMISSIONS

CORNWALL COUNTY

Mrs. Evelyn Priscilla Grout, Killacliff, Trevelga Road, Newquay.
Sir Robert George Howe, G.B.E., K.C.M.G., Cowbridge, Lostwithiel.
Miss Margaret Ruth Ironside, The Stewardy, Boconnoc, Lostwithiel.
Mrs. Josephine Duff Mawer, Portloe, St. Mary's, Isles of Scilly.
Lady Celia Marjorie Molesworth-St. Aubyn, Pencarrow, Washaway, Bodmin.
Mrs. Poira Page Newsome Sprayson, 22, Victoria Road, Camelford.
Mrs. Una Ruth Toynbee, Little Mainstone, West Looe.
Mrs. Lilian May Uglow, Manaton, South Hill, Callington.

DENBIGH COUNTY

Dr. Enid Wyn Jones, Llety'r Eos, Llansanan, Denbigh.
Mrs. Anne Humphreys, Eryl, Llanrwst.
Mrs. Elvie Alice Morris, Top Flat, Cefn Park, Wrexham.
Mrs. Lilian Parrott, 202, Chester Road, Wrexham.
Miss Mollie Kate Stone, Howells School, Denbigh.

HUNTINGDON COUNTY

Harold Bream, 4, Shafto Cottages, Buckworth, Hunts.
Mrs. Ann Speir Comerford, Stow Cottage, Stow Longa, Huntingdon.

WEEKLY NOTES OF CASES

PROBATE, DIVORCE AND ADMIRALTY DIVISION
(Before Lord Merriman, P., and Barnard, J.)

MARCZUK *v.* MARCZUK

October 24, 26, 27, November 16, 1955

Husband and Wife—Maintenance—Discharge of order—Adultery—Condonation—Sexual intercourse with knowledge of adultery as proof of reinstatement of wife—Summary Jurisdiction (Married Women) Act, 1895 (58 *and* 59 *Vict., c.* 39), *s.* 7.

APPEAL from justices.

The parties were married in 1950 and there was one child of the marriage. In September, 1954, the wife left the matrimonial home, and on September 8, 1954, the justices made a maintenance order in her favour on the ground that the husband had wilfully neglected to provide reasonable maintenance for her and the child. Shortly afterwards the parties met, and from November, 1954, to March, 1955, the wife visited the husband on Saturday evenings when sexual intercourse took place between them and he usually gave her some money. On the evening of May 8, 1955, the husband saw the wife who said she was in love with someone else and he followed her and a man to some woods. Later that evening the wife visited the husband at the matrimonial home and told him again that she was in love with someone else, but sexual intercourse took place between them. The husband applied under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, for the discharge of the order of September 8, 1954, on the ground that the wife had resumed cohabitation with the husband between November, 1954, and March, 1955, and that she had committed adultery on May 8 with one R. Before the justices the wife admitted having met R. on May 8, but she denied having committed adultery with him. The justices adjourned the case to enable R. to give evidence. At the adjourned hearing they found that adultery had been proved, and they discharged the order, stating in their reasons that a *prima facie* case of guilt had been raised by the husband which had not been rebutted by the evidence of the wife and R. On appeal,

Held, (i) although there was no provision in the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1949, for making R. a party, he was an important witness, and, furthermore, it was only fair to give him an opportunity of answering the allegation of adultery, and there could be no objection to the course taken by the justices.

(ii) although the onus of proving adultery remained throughout on the husband, that onus could only determine the matter if the evidence was evenly balanced; in the present case the justices had come to a determinate conclusion that adultery had been committed, and, therefore, it was not necessary to consider the question of onus.

(iii) the sexual intercourse which took place on May 8 when the husband had knowledge of the wife's conduct earlier that evening was conclusive proof that he had condoned the adultery and reinstated her as his wife.

(iv) notwithstanding the absence of any proviso to s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, relating to connivance in, condonation of, or conduct conducing to, adultery, the words " an act of adultery " in that section must be taken to mean an act of adultery on which the husband could rely, and in the present case, the husband, having condoned the wife's adultery on May 8, could not rely on that adultery for the purpose of discharging the order of September 8, 1954.

Counsel: *King Anningson* for the wife; *Goodenday* and *D. D. H. Sullivan* for the husband.

Solicitors: *Evelyn Jones & Co.*, for *Gowman, Easterbrook & Co.*, Paignton; *Lucien A. Isaacs & Maxwell Simon*, for *Arthur Goldberg*, Plymouth.

(Reported by G. F. L. Bridgman, Esq., Barrister-at-Law.)

THE DISTRICT AUDITOR AND THE WATER-DIVINER

By THE REV. W. J. BOLT, B.A., LL.M.

A few readers have written to me on points mooted in my earlier articles, and three letters asked for further information about the same topic, the water-diviner who attracted the notice of the " J.P." over a long period. To provide the information required, I was compelled to consult the references I cited; and it dawned upon me that here was a story which deserved a wider public.

It all began in 1897. The caption at p. 367 is, " The Auditor and the Water-Diviner: Refusal to allow Payment." " At the recent audit of the accounts of the Urban District Council of Ampthill, Beds., held at the Courthouse, Ampthill, by Mr. W. A. Casson, the district auditor for the county, several ratepayers attended and objected to certain expenses which had been incurred in the employment of Mr. Leicester Gataker, a water-diviner. The audit was adjourned for the attendance of members of the council who had authorized the payment, and when these gentlemen appeared before the auditor, they expressed their firm belief in the powers of the diviner. They explained that the diviner had indicated several places where water would be found, and the Council has applied to the Local Government Board for a loan with which to carry out the boring there. Against this, it was alleged that the reports of the Geological Survey to the Government, showed that a proper supply of water could not be found where the diviner had indicated its existence, as there was nothing but a shallow bed of sand there, beneath which lay a stratum of Oxford clay, the depth of which had never been fathomed. After a long hearing, the auditor announced that he would surcharge the councillors with payments which they had authorized, to the extent of £13 8*s.* 7*d.*, as, in his opinion, local authorities were not justified in spending public money in the employment of persons professing to exercise powers of this kind. Experimental borings in searching for water, where scientific information, based on the state of the geology of a locality, indicated its probable presence, might properly be undertaken at the expense of the rates, but the methods of the diviner were of another order. The councillors concerned had not succeeded in convincing him that, after having obtained the report of the diviner, they knew anything more than was previously known of the water-bearing properties of the locality; and, as the courts had held that the pretence to a power, whether moral, physical, or supernatural, was illegal he was bound, in the interests of the ratepayers, whose money was taken from them under threat of distress of their goods, to see that such moneys were not expended on such enterprises as water-divining. The Council were in the position of trustees and must exercise the greatest care in spending funds entrusted to them, in a strictly legal manner."

An editorial, at p. 388, entitled " Water Diviners " examined the case. The writer held the craft in low esteem, and discussed the point whether water-divining did not fall within s. 4 of the Vagrancy Act, 1824. " Every person pretending or professing to tell fortunes or using any subtle craft, means or device, by palmistry or otherwise, to deceive and impose upon any of His Majesty's subjects, shall be liable to imprisonment as a rogue and vagabond." He cited cases in which the Act was applied to palmistry and spiritualism, and continued, " It would seem that the crafts, means and devices referred to in the section, are to be distinguished from lawful crafts on the ground of their being incapable of scientific proof, at any rate to the minds of the persons to whom they are exhibited. . . . Whether a water-diviner

is able to show that his alleged powers are capable of scientific proof is a question for men of science, and it would certainly seem that, at any rate, the District Council of Ampthill had not been provided with any of the scientific data upon which Mr. Gataker based his opinions. The fact that a water-diviner is able to show that in a large or small percentage of cases in which he has been employed, water has been found at the spot he indicated, hardly goes far enough to prove his powers to be scientifically based. There is no question that a palmist or fortune teller might produce a number of witnesses to prove that the character, fortunes, and facts, which he alleged to be borne, enjoyed and accomplished by persons whose hands he had examined, had been actually so borne, enjoyed, and accomplished. The more supernatural the power claimed, the more marked is the success in a few instances as against the larger percentage of failures. We have failed to find on a casual examination of textbooks, any scientific demonstration of the water-diviner's art. . . . If water had been found, it is permissible to ask, would the auditor have been so satisfied of the illegality of Mr. Gataker's performance as to disallow and surcharge his fee?"

At p. 412, a correspondent submits details of scientific treatises on the craft. "Gentlemen, In your article on Water-diviners at p. 388 you speak of having made a casual consultation of textbooks to see whether any scientific demonstration of the art could be found. The subject is summarily dealt with in Carpenter's *Mental Physiology*, p. 288 (Kegan Paul and Company; 1878), but an exhaustive treatise on water-divining and the divining-rod, by M. Chevery, was published in France in 1854 (*De la Baguette Divinatoire*, Bachelier, Paris). We read that the pretended art of finding underground water was first practised in France in 1630, having been introduced from Bohemia. Though some have asserted that it has been continuous from the time of Moses to this day, there is no authentic evidence of it earlier than the above date. At that time, the so-called divining-rod had already been in use in France for more than two centuries, since 1413, to discover veins of metal, murderers, robbers, and the boundaries of estates. We read in the same treatise that notorious French diviners have asserted that they could divine as well without the rod as with it, and that on whatever object of search they fixed their thoughts, whether metal or murderer or underground water or disputed boundary, that, and that only, was revealed to them without their being misled by the intervention of the others crossing the trail. Your obedient servant, C. Wolley Dod, Edgehill, Malpas."

The auditor himself evidently read the "J.P.," and exercised his right to use its columns, at p. 448. "Water Diviners. In the article on water-diviners in your issue of the 19th ult., I find that I am referred to as having, at my audit of the accounts of the Ampthill District Council, taken the view that a person who uses a divining-rod is liable to the penalties prescribed for rogues and vagabonds by 5 Geo. 4 c. 83, and you say that in my decision, I quoted the case of *Penny* v. *Hanson*. I shall be glad if you will permit me to say that I did not make any reference to the statute you mention, nor did I quote the case of *Penny* v. *Hanson*. The case I quoted was *R.* v. *Giles*, in which as reported in 34 L.J.M.C. 50, the Court held that the pretence of a power, either physical, moral, or supernatural, and obtaining money by the false assertion of such a power, is an indictable offence under the statute 24–25 Vict. 98. It was clearly shown that the water-diviner was employed expressly for the purpose of finding water by some occult process and not by any method ordinarily adopted by water engineers, and I therefore treated this as an unlawful consideration which rendered the contract for his employment void, and any payment under it, illegal and therefore such as I was bound to disallow under s. 247 of the Public Health Act, 1875. I am, etc., Wm. A. Casson, Bedford."

The editor regarded the dispute as deserving further space, and in a later issue, at p. 521, he published the auditor's original report in full.

"At my audit of the accounts of the Ampthill District Council for the year ended March 31, 1897, certain ratepayers attended and objected to some payments in the accounts, among which was an account of £13 8*s.* 7*d.* to Mr. Leicester Gataker. I found that after some correspondence had passed, Mr. Gataker was engaged by the Council to visit the district, and that he made a report to them in the following terms. 'On August 13, 1896, I visited Ampthill, and in the presence of some of the members of the District Council, I prospected the various fields in the vicinity with a view to discovering water to meet the requirements of the town. I commenced operations on the north side, and stakes were driven in, and a supply varying between 2,000 and 5,000 gallons per day, at a depth of 200 to 300 feet, can be found. This is impracticable. I then visited Mr. Fountain's Launder's Well in the Little Park. There I selected several springs,' and he gives a detailed list of 13 of them, with their depth and flow in gallons per day.

"'Of course, other streams can be collected whilst work is being carried out. Some were marked that are not included in this report. I suggest a large-diameter well being sunk, and adits being driven to the points located, to collect water in one reservoir, so to speak, and pumped from the one well. The water can be raised if the levels do not permit of a gravitation scheme from that field. I then visited Doolittle Mill. Here, the flow was about 40–60 gallons per hour, and the depth 100–130 feet, the only one spring about the place. From there I went to a small garden which is situated near Mr. Seabrook's house, and I reckon about 9,000 gallons per day can be taken out of that garden alone by sinking to a depth of 15 to 20 feet. I shall be pleased to carry out any work required by the Council; and, should I be entrusted with the same, knowing the whereabouts of the water at each point, it may be an advantage to me to carry out the scheme. Any question the Council wish to put to me, I shall be pleased to answer. Leicester Gataker.'

"In pursuance of a notice from me of an intended surcharge, Mr. Field, Mr. Meek, and Mr. Crisp attended at the audit, and stated that the method of seeking for water which was adopted by Mr. Gataker, was as follows:

"Mr. Gataker started from a spot and walked with his hands spread out, and from time to time, came to a dead stop. He then made a mark with his heel, and then went back a few paces to the spot where he had felt the presence of water, and stepped again to the spot he had marked with his heel. He then directed the Council's Surveyor to turn a sod at these spots and stated that water would be found there, and in given quantities. Thirteen springs were so indicated by him. From a printed book of testimonials in the possession of the Council, which had been received from Mr. Gataker, it appeared that Mr. Gataker was described as 'a water-diviner and a dowser,' and there were pictures of Mr. Gataker 'using a twig or divining-rod' and also 'prospecting for water with his hands alone,' together with descriptive accounts, in one of which it was stated, 'most water wizards use the twig in their divinations, but Mr. Gataker uses his hands only. He is made sensible of the presence of water beneath the surface by experiencing a mild tremor all up the muscles of his arms and a slight tingling sense in the palms of his hands, not unlike a weak electric shock. But Mr. Gataker not merely finds water—he also gauges the depth at which it will be found and this he estimates according to the sensations felt.'

"The payment made to Mr. Gataker was described in his account rendered to the Council, as follows:

Aug. 13, 1896. To Professional Visit and Search for water	£10	10	0
Travelling Expenses	£2	18	7
	£13	8	7

"I disallowed the said payment of £13 8*s.* 7*d.* (1) because I was satisfied from the information before me that Mr. Gataker had represented to the Council that he could discover subterranean sources of water by means of a power of divination or dowsing, that he had been employed by the Council to exercise such power, and that he had in fact gone over land in the district in the presence of certain members of the Council, professing to seek water by means of divination with his hands alone, and I considered that Mr. Gataker had therefore with a view to obtaining the fee paid to him by the Council, made pretence to a power within the meaning of the decision in *R.* v. *Giles*, 34 L.J.M.C., in which it was held 'that the pretence of a power either physical, moral, or supernatural, and obtaining money by the false assertion of such a power, whichever it may be, is in our opinion, an indictable offence under the letter of the statute and within the mischief intended to be prevented by it.' I therefore regarded the consideration in the agreement for Mr. Gataker's employment as an illegal one, and the agreement for such as void in law, and the payment made under it as illegal. (2) Because I was satisfied from the information before me that Mr. Gataker had represented that he could discover subterranean sources of water by means of a power of divination or dowsing, and that he had been employed to exercise such powers. From a report dated September, 1895, which had been obtained by the Council from Mr. Marshall, C.E., it appeared that Mr. A. C. G. Cameron, a geological surveyor attached to Her Majesty's Geological Survey Department, had explained in writing and by means of a diagram section, the geological features of the Ampthill district as being a layer of lower greensand superimposed on a very thick bed of Oxford clay, in which no water was likely to be found. The Council had disregarded this information and acted on the advice of Mr. Gataker, and I was of opinion that their proceedings in this respect were reckless and likely to lead to a waste of the public funds under their control, and the employment of Mr. Gataker as a guide to the whereabouts to bore for water in consequence of the methods of seeking water which he adopted, of a speculative and hazardous nature in which the Council were not justified in embarking, and the money paid for such employment was an improper payment for which there was no lawful authority. (3) Because I was satisfied from the information before me, that Mr. Gataker had represented that he could discover water by means of a power of divination or dowsing, and that he had been employed to exercise such power. I regarded this claim to a power of finding water, either with or without a divining rod, as being an imposition on the minds of the credulous, seeing that however it may be now defended by reference to 'a highly sensitive nervous organization' and the like, it is a survival from times when magic and witchcraft were generally believed in and when the divining rod was used to discover, not only sources of water but lodes of metal ore, hidden treasure, the bodies of murdered persons, and lost boundaries of land. That Mr. Gataker could find water by the exercise of the power of divination was, in my opinion, as impossible to believe as a claim to exercise powers of witchcraft, and I therefore treated Mr. Gataker as a person whom it was not competent for the Council to employ for the purpose for which he had been employed, and the payment for whose employment as one for which there was no authority in law. Wm. A. Casson."

The urban district councillors of Ampthill did not submit cheerfully to this ruling of the auditor, and in the next financial year, they repeated the earlier routine, and made the water-diviner a purported payment from local funds. The next round is reported in the "J.P." in 1898, p. 267.

"A Water-Diviner's Fees Surcharged: Several ratepayers attended the audit of the accounts of the Ampthill Urban District Council, and objected to a payment to Mr. Leicester Gataker for divining for water. It was stated that, on a similar objection last year, the auditor had surcharged the fees paid to the diviner, and an appeal had been made to the Local Government Board, but had not yet been decided. Mr. Gataker had one divination in which he recommended boring in a place called Fontaine's Field, near the surface and in the greensand. After some boring had been undertaken and a water engineer had recommended the abandonment of the work, Mr. Gataker had furnished a further divination locating 10 fresh so-called 'springs.' These, it was objected, were contrary to the first series of divinations in the same field, as, at the depths indicated, it was confirmed by geologists that there could be no water at all, for the borings would then be deep in the Oxford clay. Mr. W. A. Casson, the Local Government Board auditor, in giving his decision, quoted Professor Barrett, who had written a monograph on the so-called divining-rod, which was published in the proceedings of the Society for Psychical Research. Though strongly biased in favour of the diviners, Professor Barrett admitted that their general ideas of water were absurd, as they imagined springs to exist like buried treasure located to an area of a few square inches, or as underground rivers which they professed to trace within an inch on either side. Mr. Casson stated that he could not, in the interests of the ratepayers, do other than surcharge the members with the fees objected to, as he was of opinion that Mr. Gataker had, with a view to obtaining the fee paid to him by the Council, made a pretence to a power within the meaning of the decision in the case *R.* v. *Giles*, 29 J.P. 165, in which it was held that the pretence of a power, either physical, moral, or supernatural, and obtaining money by the false assertion of such a power, whatever it may be, was an indictable offence under the letter of the statute, and within the mischief intended to be prevented by it. The consideration for the agreement for Mr. Gataker's employment was therefore an illegal one, and the agreement for such employment void in law. He regarded divination as a survival from times when magic and witchcraft were generally believed."

After quoting the case at length, he added: "Where the practice of divination was not deliberately fraudulent, it was perhaps explicable on the hypothesis of self-deception, and the fact that where scientific tests were applied to diviners, the experiments generally failed, showed that much depended on what an eminent geologist who had written to him, described as the use of an eye trained to notice the surface features of the ground."

The next development is reported at p. 748.

"The Water-Diviner's Fees. With reference to the case where the Ampthill District Council employed a water-diviner to find springs of water, and incurred expenses in connexion with his fees, which expenses the district auditor subsequently disallowed, the Local Government Board have now reversed the auditor's decision, and have written a letter on the subject to the following effect:

"'As regards the auditor's first reason, the Board do not consider that it has been proved that Mr. Gataker committed an indictable offence, or that, if he did so, the members of the District Council were aware that his pretences are illegal. This being the case, the Board are of opinion that it must be held that the first reason assigned by the auditor, fails to support

his decision. As regards his second reason, the Board cannot but consider the action of the District Council as unwise; but it does not appear to them, having regard to the recommendations the Council received as to Mr. Gataker's capabilities, that the Council can be considered as having acted with such recklessness that the disallowance and surcharge can be confirmed on this ground. In view of the above considerations respecting the auditor's first and second reasons, the objection taken by him in his third reason, appears to this Board, to be insufficient to support his decision; and in these circumstances, the Board proposes to reverse the disallowance and surcharge. An Order will shortly be issued accordingly '."

Ampthill accordingly drops out of the purview of the " J.P."; but there is a faint echo of the controversy a quarter of a century later.

At 1923, p. 616, the caption, Water "Diviners," greets the eye.

" The attitude of the present Minister of Health towards water diviners, and the expenditure of local authorities in connexion with the services of water diviners, differs from that adopted by the late Local Government Board. The latter considered such expenditure ' unwise,' though, on technical grounds, they did not support certain disallowances of such expenditure, as made by their district auditors. Mr. Neville Chamberlain, when interrogated recently on the question in the House of Commons, said he was not aware of any recent evidence as to the success or failure of water-divination by dowsers but, he added, local authorities if they choose can incur reasonable expenditure on their employment.

"This surely is the right attitude to adopt. The fact that an auditor, or even a Minister of Health, does not believe in the occult powers of the water diviner is no reason for challenging expenditure on his services by a local authority which does so believe. After all, ' there are more things in heaven and earth than are dreamt of in our philosophy '."

Both at Whitehall and in Fetter Lane, scepticism had given way to an agnostic tolerance. The " J.P." had revealed this change of heart somewhat earlier. In 1915, at p. 54, it had given a fair amount of space to reporting a session of the Yorkshire Philosophical Society; and the chief theme on the agenda had been " water-divining."

In Lighter Vein

APPEAL AGAINST NOTICE TO EXECUTE WORKS

I am waiting to come on—and the delay seems never ending. My solicitor opponent looks a lean, hard bitten type. I like the look of him as much as Caesar did of Cassius. I have tied and untied the tape on my papers at least three times, and my principal witness, the Sanitary Inspector, has smiled at it the last twice.

Another Judgment Summons—and the Judge taking a personal part—" But, My Lord," says the Judgment debtor " I have given my wife £3 housekeeping each week for these last 20 years: she should have paid it. I have never missed." He looks expectantly round the Court as though awaiting a burst of cheering. No one claps, but the Judge sighs. " You know all household articles have increased in price, what of your wages? " " Oh, my wages have gone up " says the debtor, " but so has the cost of beer and fags. My wife has to be very careful to feed seven of us on the £3, but I have to be careful too." The Judge, getting a little fatigued by this naive outlook, suggests that the domestic training he has given his wife is excellent, and makes an order of £2 per month, which wipes the smile from the debtor's face.

A running-down case is opened, and I bow and wander into the corridor.

My case was so simple when I had been discussing it with the Town Clerk and others a few days ago. " The Chief Sanitary Inspector is a reliable man in the box and you know your Housing Act, I suppose? " Airily, I had assured him this was so.

The Housing Manager had been somewhat more apprehensive —" I am glad the Inspector had not to press for too much " he said, " because if it was shown to be not repairable at a reasonable expense, I would not know where to put a family of that size for over two years. It is vital that this property be maintained." I had confidently reassured him.

In fact the appeal had been against the amount of repairs —too much and too early; this recollection eases my mind and I wander into Court again.

" If " says Plaintiff's Counsel " my Learned Friend will only tell his witness what to imagine we shall all be saved time." Says Defendant's Counsel: " I thought my Learned Friend's experience of truth was slight and wonder why he does not want Your Honour to hear it."

The Judge is obviously annoyed: " I am tired of this exchange of improper remarks; I will decide if the question is leading or not; if there is another childish interlude I shall adjourn the case."

The case soon finishes after that. I like this Judge—he knows his way around.

My case is called and my opponent stands up smartly; I would like to do the same but happen to have my feet on the somewhat overlarge office gown and cannot move; I might as well be nailed down.

He has called his first witness, a very omniscient architect and I rise to cross-examine. The architect has put in a plan. "This is what I think of your plan," I say, and tear it in several directions and drop it on the floor This is very effective, and the Judge raises his eyebrows. In his next answer Mr. Knowall refers to his plan, the Judge looks at his copy and the Sanitary Inspector picks the portions of mine from the floor and tries to piece them together.

I ask about the stairs. Knowall replies that the fliers need some attention. The only flyers I know anything about, and they certainly did not need attention, are of the heavily-moustached variety who used to dive over the house when my sister was sunbathing on the roof. Why can't he use basic English, words such as *ejusdem generis?*

I challenge his materials quantities, and he replies that he made provision for abatement. The only nuisance mentioned to me is this witness.

He has dismissed the damp in the house, and I go to town on this. " I would," he says, " employ apron flashing at one window, repair the air drain, and use an accelerator in the basement." The first sounds like housewife's choice and the last as though he's got his car into difficulties.

I persist in pressing the damp state and refer to the scullery. " Merely gathering," he says, " often get it with distemper, and I found no use of lining paper."

I have no idea whether he or the scullery were gathering clans or nuts in May, so I refer to the decayed brickwork, which I point out started poor in quality anyway. He would, of course, disagree. " In my opinion the brickwork is alright, the bricks were probably shippers, certainly not chuffs." The only choughs I know come from Cornwall and the only shippers from Liverpool, so I give him up.

The case grinds its way through and the Judge extends the lunch adjournment so that he can view the place. My lean opponent looks hungrier than ever and explains to the reporter the finer points of his cross-examination of the Sanitary Inspector.

Late afternoon and His Honour summing up. At length . . . " I find in examination considerable evidence, even to the layman, of need for repair." This is good, my hard bitten opponent is biting his nails hard. The Judge looks at me and this is an opportunity any good advocate would seize and I know my law, section 9 especially, so I will press the point home: " In fact, Your Honour found it was unfit for human habitation? " I query.

" Thank you," said the Judge, " I construe that as a request by the authority under paragraph (*b*) of sub-section (2) of section 15 of the Housing Act, 1936." I have no idea what he means, but the position is now impregnable, so I half bow.

" Very well; in my judgment the house cannot be rendered fit for human habitation at a reasonable expense and I consider the Local Authority should make a demolition order and rehouse this family as soon as possible. I allow the appeal, but without costs."

I am stunned; I deliberately fail to catch the Housing Manager's eye: he looks awful: I think I will leave the Court by the solicitors' entrance; it is too late to return to the office today, and anyway I am too tired.

J.E.S.

In Lighter Vein

AT FORTY YOU'VE HAD IT!

My first sight of Muggins, Slapdash and Flapp was in the porch of a grimy, country, courthouse.

Each was preparing to convince a sceptical bench as to the excellence of his and her driving, and the innocence of their respective actions, Slapdash by slapping any back within reach, and calling the owner " Laddie "; Winifred Flapp by smiling tearfully at every policeman within range, and Muggins by harassing an already harassed and over-worked solicitor.

" It's crazy," he cried, " I was only doing 30—well, possibly 35, the road was clear, not a soul in sight, and they now have the gall to send me one of these darned things."

The summons he waves is interesting. " Be sure to bring your licence with you " reads a little red label gummed to it.

One can almost pity Muggins. Every day he speeds through Outer London with satisfaction and no one seems to mind. And now, of all things, to be caught for speeding through Little Puddleton. What an end to 20 years of undetected crime ! The fine never topples anyone into bankruptcy, but the penalty is scarcely light though. No one ever gets away with a song, for the endorsement of a licence, which is compulsory on a conviction for this offence, is no singing matter.

" Why bother ? " asks Slapdash who has been caught before. " The endorsement only remains on the licence for three years. After that it is removed." His memory is short, or maybe he was lucky on his previous appearance. The endorsement may not be visible when the licence is renewed in the fourth year, but this does not remove the conviction from the police record of " previous convictions " which will be read out when he is next found " guilty " of an offence whether it is connected with road traffic or not. Slapdash has been proved a road menace, and would do well to remember the fact. There is almost no limit to the consequences, or the accumulation of consequences, that can flow from convictions for speeding. Yet only one in ten motorists charged ever realizes that there is far more at stake than " thirty bob."

Accidents often occur in circumstances in which either party could equally have been the cause of the catastrophe. Even though the police still have to prove their case beyond reasonable doubt, the inspector whose duty it is to decide which of the parties shall be prosecuted can hardly be blamed for choosing a man whom he knows to have been a previous traffic offender. If Muggins finds himself in this role he can scarcely complain. If he has been caught out on the roads before, it is at least likely that he has offended again, unless the evidence suggest his innocence.

The odds are heavily loaded against the motorist from the start. In districts where the official eye is blind so long as speeding is kept within reasonable bounds it may be far easier to " scotch " the offender on a more serious charge, such as dangerous driving. Then more drastic action can be taken against him.

If a motorist is caught in certain areas where 30 miles an hour zones are zealously watched—Cambridgeshire for one—he may be forgiven for feeling surprised, but not for complaining " Haven't you anything better to do ? "

The police have not. Few cases come to court in which the driver charged has been travelling at 30½ miles per hour, and no more. Most reach 40 miles per hour, at least, during part of the time they were being tailed. Many travel a great deal faster still.

Few offences are easier to prove. A police car has only to follow its quarry for five-tenths of a mile to establish an excessive speed. Its speedometer is the only corroborative evidence that is needed. Invariably the police evidence ends:

" Later that afternoon I tested the speedometer and it was found to be accurate."

There's only one chance of escape. Sometimes—and not very often—a police car is blocked by traffic, travelling in the same direction as the chase. If the pursuit started towards the middle of the "built-up" area, it can happen that the police car has to travel at 60, or more, to catch a car cruising at a far smaller speed before the end of the restricted zone is reached. Very few defending solicitors find this excuse landing in their laps.

There are other technical " let outs," but it is very seldom that the police forget to warn Muggins that he will be reported for proceedings against him to be considered, rarer still that a polite letter fails to warn him within 14 days that he is going to be summoned.

Endorsement it will be then. Not that Slapdash worries. His licence has been endorsed before. Miss Flapp, on the other hand, will wear sackcloth and ashes for years, to the considerable

benefit of the Police Benevolent Fund. She would rather crawl than appear in court again.

Poor Miss Flapp ! She's right, of course. Slapdash *is* riding for a fall. One day his luck is out and there is an accident. Maybe it *was* the dead man's fault, but one cannot cross-examine a corpse.

The police say it was dangerous driving—manslaughter maybe. Slapdash lives up to his name in the witness box as on the road. The court is not impressed by his account of the incident. He loses the case.

What is known about this man ? Slapdash's grin wanes somewhat. Out it comes, and at each recitation of previous convictions—and one is bad enough—one can feel the odds piling up against him.

The sentence may be a " corker " when it is pronounced.

Sometimes a speeding charge can be laid down to mere thoughtlessness on the driver's part—but quite as often the motorist was well aware that he was exceeding the limit—and saw no great harm in doing so. " It was a fine night and an empty road " he will say, or " Everyone else was speeding so why not me ? "

It is at this point that the offence becomes fascinating. Deliberate law breaking on a minor scale unravels a Fagin's Paradise of possibilities. Can the man who flouts the law in trifles be trusted to respect its greater issues ? If he travels at " 45 " in 30 miles per hour zones will he be a safe or a dangerous driver in open country? The police betting is that he will be a menace to himself and everyone else on the road.

If a fresh offence is proved against a man previously convicted of speeding the punishment often reflects the bench's disapproval that the penalty for his earlier escapade has failed to deter the offender.

In a recent Assize case, a man with a whole folio of petty traffic offences behind him, pleaded " guilty " to carnal knowledge of a girl under the age of consent. All in the Court thought that the girl was entirely to blame—the Judge most of all. Evidence as to earlier convictions was called for—all were parking offences, riding bicycles without lights and exceeding the 30 miles per hour speed limit. This last offence had happened twice.

" Some Judges take no notice of these petty incidents, but I do " was the Assize Judge's comment. " They show a persistent disregard for the law. You should have protected the girl against herself, and I am going to send you to prison."

Opportunity and bad luck are frequently the frontiers between petty and serious crime. An endorsed licence for speeding may well be the first patch in a quiltwork of designed law breaking.

Slapdash may not care—but Muggins, beware !

JOHN HALES-TOOKE.

CIRCUITS OF THE JUDGES

All Business must be ready to be taken on the first Working Day, unless a later day is given for Civil or Divorce Business.
DIVORCE BUSINESS WILL BE TAKEN AT THE TOWNS MARKED† ONLY DEFENDED CASES WILL BE HEARD
The Judge, or Judges visiting each Town are shown by numerals 1, 2, 3, etc.
The following Judges will remain in London:
Queen's Bench Division: THE LORD CHIEF JUSTICE OF ENGLAND, HILBERY, J., CASSELS, J., SELLERS, J., SLADE, J., PEARCE, J. DEVLIN, J., HAVERS, J., GLYN-JONES, J. AND GERRARD, J.
Divorce Division: THE PRESIDENT, WALLINGTON, J. and COLLINGWOOD, J.

WINTER ASSIZES, 1956	SOUTH EASTERN	WALES AND CHESTER	WESTERN	NORTHERN	OXFORD	MIDLAND	NORTH EASTERN	WINTER ASSIZES, 1956
Commission Days	*Stable, J.* (1) *Jones, J.* (2)	*Barnard, J.* (1) *Finnemore, J.* (2) *Barry, J.* (3)	*Oliver, J.* (1) *Byrne, J.* (2) *Davies, J.* (3)	*Lynskey, J.* (1) *Gorman, J.* (2) *McNair, J.* (3) *Karminski, J.* (4)	*Hallett, J.* (1) *Pearson, J.* (3)	*Pilcher, J.* (2) *Sachs, J.* (4) *Ashworth, J.* (5)	*Willmer, J.* (1) *Streatfeild, J.* (2) *Ormerod, J.* (3) *Donovan, J.* (4)	*Commission Days*
Tuesday *Jan.* 10						Aylesbury (2)		Tuesday *Jan.* 10
Wednesday 11	Huntingdon (2)	Welshpool (2)	Devizes (1)		Reading (1)		†Newcastle	Wednesday 11
Friday 13		Dolgelley (2)		Appleby (2)		Bedford (2)	(2, 4)	Friday 13
Saturday 14				†Carlisle (2)				Saturday 14
Monday 16	Hertford (2)	†Caernarvon (2)	Dorchester (1)		Oxford (1)			Monday 16
Tuesday 17						Northampton (2)		Tuesday 17
Thursday 19	Cambridge (2)	Beaumaris (2)	Taunton (1)	Lancaster (2)	Worcester (1)			Thursday 19
Monday 23						†Leicester (2, 5)	†Durham (2, 4)	Monday 23
Tuesday 24								Tuesday 24
Wednesday 25		Ruthin (2)						Wednesday 25
Thursday 26	†Ipswich (2)		†Bodmin (1)	†Liverpool (1, 2, 3, 4)	†Gloucester (1)			Thursday 26
Monday 30		Mold (2)						Monday 30
Tuesday 31						Oakham (2, 5)		Tuesday 31
Wednesday *Feb.* 1	†Norwich (1, 2)	†Chester (2, 3)				†Lincoln (2, 5)		Wednesday *Feb.* 1
Friday 3			†Exeter (1, 2)					Friday 3
Monday 6					†Newport (1)		†York (2, 4)	Monday 6
Tuesday 7						†Derby (2, 5)		Tuesday 7
Wednesday 8	Chelmsford (1, 2)				Hereford (1)			Wednesday 8
Wednesday 15		Presteign (3)	†Bristol (1, 2)				†Sheffield (1, 2, 4)	Wednesday 15
Saturday 18		Brecon (3)				†Nottingham (2, 4, 5)		Saturday 18
Monday 20					†Shrewsbury (1)			Monday 20
Wednesday 22	Kingston (1, 2)	Lampeter (3)		†Manchester (1, 2, 3, 4)	Stafford (1, 3)			Wednesday 22
Thursday 23		Haverfordwest (3)					†Leeds (1, 2, 3, 4)	Thursday 23
Monday 27			†Winchester (1, 2, 3)			Warwick (5)		Monday 27
Thursday *Mar.* 1	Maidstone (1, 2)	†Carmarthen (3)						Thursday *Mar.* 1
Friday 2		†Cardiff (1, 2, 3)			†BIRMINGHAM (3, 4, 5)			Friday 2
Monday 5								Monday 5
Tuesday 6	†Lewes (1, 2)							Tuesday 6
Monday 12								Monday 12
Thursday 15								Thursday 15

THE BATTERSEA BUN

Divisional Court—October 14, 1955

Young Tommy bit a bun in half,
It cut his mouth and made him laugh:
Spitting the blood between his dentures,
He said " Life's full of misadventures."
He laughed again though still he bled
Then, moved by pain and anger, said
" To Battersea Town Hall I'll go
" And tell the M.O.H. my woe."
Process ensued: the Bench inclined
To Section 9: the firm was fined.
The firm appealed and what the Court
Pronounced is in the Law Report.
" The bun itself is wholesome, good;
" We cannot say it's unsound food.
" The remedy is Section 3:
" The bun is not the quality,
" The nature or the substance we
" And purchasers expect to find;
" And now we have to turn our mind
" To whether Section 9 applies.
" We think it doesn't: costs arise."
The other Justices concurred
So Battersea has got the bird.
The moral is—Eat richer fare
Like pheasant, grouse or partridge;
Game that descending from the air
Contains shot from a cartridge.
Eat Christmas Pudding every day
And when you masticate it, say
" Though threepenny pieces break a tooth
" The pudding's none the worse, forsooth."
The Court allowed the appeal, with fun,
But I can't swallow Miller's bun.
The Law, no doubt, is right and lawful:
The commonsense, I think, is awful.

C.M.W.S.F.

A GUIDE TO EXPRESSIONS USED IN GOVERNMENT AND LOCAL GOVERNMENT CIRCLES

Phrase	*Interpretation*
" Under consideration " ...	Never heard of it.
" Under active consideration "	Will have a shot at finding the file.
" In abeyance "	File still missing.
" Is receiving very careful consideration "	A period of inactivity covering the time lag.
" I should be glad of your further comments " ...	Can you give me some idea of what it is all about.
" Putting him in the picture "	A long confusing and inaccurate statement to a newcomer.
" The matter is somewhat in the air at present " ...	I am completely ignorant of the whole subject.
" You will remember " ...	You have either forgotten or never knew.
" Passed to you "	You try nursing the baby; I'm tired of it.
" Will have it laid on " ...	Will ask another department to do the job for me.
" In conference "	He's gone out and I have no idea where he is.
" Kindly expedite reply " ...	For heaven's sake, do try and find the confounded papers.
" I am snowed under " ...	I did not get my usual two hours for lunch.
" Passed to a higher level "...	The papers have been sent to a more sumptious apartment.
" Estimate "	A shot in the dark.
" For action as necessary "...	Do you know what to do about it; we don't.
" Concur generally " ...	Have read the document, but don't want to be bound by anything I say.
" Strongest protest "... ...	I should like to be rude to you, but I daren't.
" It will be appreciated " ...	Don't you understand, you damn fool.
" You must improvise " ...	We can't supply it, so you had better scrounge it.

BOOKS AND PUBLICATIONS RECEIVED

The Road to Justice. By the Right Honourable Sir Alfred Denning. London: Stevens & Sons, Ltd., 119 and 120 Chancery Lane, W.C.2. Price 10*s.* 6*d.* net.

Capital Punishment. The Heart of the Matter. By Victor Gollancz. London: Victor Gollancz, Ltd., 14 Henrietta Street, Covent Garden. Price 1*s.* net.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

CHILDREN AND YOUNG PERSONS BILL

Mr. W. Hannan (Maryhill) has been given permission, under the Ten Minute Rule, to introduce in the Commons a Bill " to extend the provisions of the Children and Young Persons Act, 1933, and the Children and Young Persons (Scotland) Act, 1937, with respect to escapes from the care of fit persons, from approved schools and from remand homes or special reception centres."

He told the House that the purpose of the Bill was to repair an omission and make good a defect in the existing Acts. Where a juvenile court was satisfied that a child or a young person was in need of care he might be committed by a court order to the protection of a " fit person," or sent to an approved school or remand home, or other arrangements made for his guardianship. A " fit person " might be an individual or a local authority. Where that child or young person subsequently ran away, no warrant was necessary for his apprehension and return.

It had been discovered, however, that where a child or young person had been committed by an order made in Scotland and had gone or been taken to England, no adequate procedure existed for his return to Scotland. Similarly, if an order was made by a juvenile court in England and Wales, and the child escaped to Scotland, there was no adequate provision made for his return to England and Wales.

Another difficulty which had become apparent was a lack of power to deal with the case where someone abducted a child from Scotland into England and *vice versa*. The Bill proposed to make good that defect. It provided that the recovery authorized by the English Act and the procedure under the Scottish Act should operate in any part of Great Britain.

He thanked the Home Secretary and the Secretary of State for Scotland for the help which they had rendered to him in the matter, and said that he knew that local authorities in all parts of the country were anxious that the amendment should be made.

There was no opposition and the Bill was formally introduced with all-party support.

DRUNKENNESS AMONG YOUNG PERSONS

Mr. A. Henderson (Rowley Regis) asked the Secretary of State for the Home Department to make a statement on his investigations into the problem of drunkenness among young persons.

The Secretary of State for the Home Department, Major Lloyd-George, replied that any increase in the number of convictions for drunkenness of young persons was a matter of great regret and concern. He was glad to say, however, that the number remained very small in proportion to the total number of young persons. The figures for 1954 were 124 offences among about 865,000 males under 17; 12 offences among 839,000 females under 17; 3,157 offences among 1,041,000 males aged 17 and under 21, and 209 offences among 1,107,000 females aged 17 and under 21.

The number of offences in any one police district was small, and the police had no reason to think that they indicated any tendency for juvenile drunkenness to assume serious proportions. His inquiries had not disclosed any clearly apparent cause of the increases that had taken place. Such further inquiries as seemed practicable would be made, and he would continue to watch the situation closely.

OCCASIONAL LICENCES: DANCE HALLS

Mr. C. Royle (Salford, W.) asked the Secretary of State if he would introduce legislation whereby intoxicants might not be obtained in dance and public halls by boys and girls under the age of 18, as in the case of public houses.

Major Lloyd-George replied that an occasional licence for the sale of intoxicating liquor on unlicensed premises might only be granted with the consent of the justices, and his information was that that enabled the justices to exercise an effective measure of control. Should there be substantial evidence to the contrary, however, he would certainly be ready to consider legislation.

Mr. Ede: " Does the Home Secretary mean that unless the justices insert a condition in the occasional licence that persons under 18 shall not be served it is legal for the person holding the occasional licence to serve them? "

Major Lloyd-George: " No. I had in mind that there was a remedy. If there were occasions of misconduct of that sort, the remedy would be in the hands of the justices when it came to issuing licences in the future."

DRUGS

In reply to Dr. H. M. King (Itchen), Major Lloyd-George stated that during 1954 there was one conviction under the Dangerous Drugs Act, 1951, for offering to supply drugs. There were 218 other convictions under the Act, the majority of which were for unlawful possession of drugs, but it was not possible to say in how many cases the drugs would have been sold to another person.

He told Mr. H. R. Gower (Barry) that whilst he had no evidence of any serious increase in illegal traffic in or use of drugs in this country, there had been some increase in the traffic in Indian hemp, and he was watching that development closely.

MOTORIST'S CONVICTION

Mr. R. D. Williams (Exeter) asked the Secretary of State if he would recommend the grant of a free pardon to Mr. A. E. G. Anderson of Exeter, who had been disqualified from driving for 12 months, in view of the details which had been sent to him.

Replying in the negative, Major Lloyd-George said he had considered the circumstances very carefully but had found no grounds on which he would be justified in recommending the grant of a free pardon.

Mr. Williams said that the man was disqualified for 12 months because it was held that in fact the vehicle concerned was not insured, whereas an official of the insurance company said it would have been covered in the circumstances. In view of that, did not the Home Secretary agree that Mr. Anderson had been most harshly treated and should be pardoned?

Major Lloyd-George replied that those grounds were before the court, which, nevertheless, convicted. It was open to Mr. Anderson to appeal, but he did not avail himself of the opportunity. It was, of course, open to him to apply after six months to see if the disqualification could be removed.

Mr. Williams gave notice that he would raise the matter again on the Adjournment.

YOUNG PERSONS IN REMAND

The Secretary of State told Mr. G. de Freitas (Lincoln) that the number of persons between 17 and 21 years of age convicted between August 1 and October 31, 1955, who had been remanded in prison before being sentenced to detention was 14.

Mr. de Freitas: " Were not detention centres meant to be an alternative to prison, and is it not a confession of failure that there are not enough remand centres for these unconvicted young people to be sent to? What is the Home Secretary going to do about it? "

Major Lloyd-George: " In some cases, it may well be, they were remanded in custody until the magistrates had decided what they should do. They could be either on bail or not, according to the circumstances. The magistrates alone are the ones to decide. The number remanded was about 36 between 17 and 21 in the three months. It is for the magistrates to decide what they should do, whether to send them to detention centres or not."

Mr. de Freitas: " Is it not a fact that these young people are unconvicted and remanded in prison, which is contrary to the intentions of Parliament in the Act? "

Major Lloyd-George: " If the hon. Gentleman has any specific case and will let me have particulars of it, I shall be very glad to look into it. So far as I can make out, it is for the magistrate to decide what he is going to do with the unconvicted young person. I shall be glad to look into the matter."

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Thursday, December 8

EXPIRING LAWS CONTINUANCE BILL, read 2a.

HOUSE OF COMMONS

Wednesday, December 7

CHILDREN AND YOUNG PERSONS BILL, read 1a.

NOTICES

The first court of quarter sessions for the county of Cardigan for 1956 will be held on Thursday, January 5, at the Town Hall, Lampeter, Cards.

The first court of quarter sessions for the county of Cheshire for 1956 will be held on Wednesday, January 4, at the Castle, Chester.

The first court of general quarter sessions for the county of Devon for 1956 will be held on Wednesday, January 4, at 10.30 *a.m.*

CORRESPONDENCE

The Editor,
Justice of the Peace and
Local Government Review.

DEAR SIR,

GOVERNORS TO CONTROL SPEED

I would refer you to your Note of the Week under the above heading at p. 745, *ante*.

The inference to be drawn from the last paragraph of the note is that in your opinion "governors" ease, from the burden placed upon drivers of motor vehicles, the duty of being sure that they do not exceed the speed limit placed upon the vehicle in question and that for that reason the drivers of the vehicles can devote their whole attention to the consideration of more important matters.

The argument may be put forward, however, that "governors" in fact tend to lead to breaches of the law far more dangerous than that which they are designed to stop.

As most properly pointed out by the J.P., on several occasions during the last 10 years or so, when circumstances arise to cause frustration and irritation a potentially dangerous state of affairs is caused. This state of affairs tends to arise with greatest frequency when a continuous line of traffic is of such a length that vehicles joining the line at its rear cannot, for a period of time, in the view of the driver of the vehicle, make reasonable use of the vehicle's mechanical capabilities.

Due to the nature of the roads in this country, the question to over-take or not to over-take has to be answered by a nice calculation based, *inter alia*, on the following considerations:

(*a*) The speed of the vehicle to be over-taken.

(*b*) The speed of the over-taking vehicle and its acceleration potential.

(*c*) The total length of both vehicles.

(*d*) The length of unoccupied near-side road immediately in front of the vehicle to be over-taken.

(*e*) The apparent absence of oncoming traffic.

(*f*) The proximity and nature of vehicles to the rear of the over-taking vehicle.

The smaller the difference between (*a*) and (*b*) the greater will be the effective length of (*c*) with the result that the greater will have to be the margin of safety in considering (*d*) (*e*) and (*f*).

An internal combustion engine will develop its greatest power at a certain optimum number of revolutions per minute. The point at which greatest power is produced is generally not far removed from the point at which peak revolutions are attained. Good acceleration is sometimes as important a safety factor as good braking. With a "governor" in action the most useful acceleration zone may be wholly unavailable not only in top gear but also, and more important, in the indirect ratios. The result of fitting a "governor" may in practice be to encourage a driver either to reduce to a minimum the period during which he will drive abreast of another vehicle, by maintaining his maximum speed without due respect to the considerations lettered (*d*), (*e*) and (*f*) or, in the alternative, to drive so closely to the vehicle immediately in front of him, with the object of losing no opportunity to overtake, that he denies to following traffic the possibility of passing only his vehicle.

The fact that a driver's control of his vehicle is thus circumscribed is bound to cause him irritation and frustration with the results you have already mentioned. If the driver adopts either line of action set out immediately above, other drivers will also be caused irritation and frustration with like results.

In the opinion of the writer, if those responsible for reaching the decision to install "governors" on vehicles were themselves (as the writer has been) compelled to drive heavy vehicles in dense traffic they would also reach his conclusion that this method of restricting a driver's control of available power is bound to increase danger on the roads.

Yours faithfully,
C. R. MULLINGS.

Cirencester Urban District Council,
12 Park Street,
Cirencester.

[We appreciate our learned correspondent's point of view, but we feel bound to say that however desirable it may be to accelerate in order to overtake and pass other vehicles, the law must not be broken in order to do so.—*Ed., J.P. and L.G.R.*]

PERSONALIA

APPOINTMENTS

Mr. M. F. Bevington of St. Neots has been appointed part-time clerk to the justices for the Leightonstone, Hunts., petty sessional division as from January 1, 1956, in addition to his present appointment as part-time clerk to the justices for Toseland, Hunts., petty sessional division. Mr. Bevington succeeds Mr. V. F. Sykes.

Mr. Edwin Austin Beach, the present clerk to Crickhowell, Brecon, rural district council, has been appointed as clerk and chief financial officer to Lydney, Glos., rural district council. He will succeed Mr. G. D. Spearing, who has been clerk to Lydney council for 31 years, and who postponed his retirement until a successor could be appointed. It is expected that Mr. Beach will commence duty in Lydney early next year, when the new council offices will be opened.

Mr. John Brewster McCooke, formerly senior assistant solicitor to Cheltenham, Glos., corporation, has been appointed deputy town clerk for the borough of Halesowen, Worcs., in succession to Mr. Maurice William Claye, who has recently taken the post of clerk to the rural district council of Sheppey, Kent.

Mr. James Donald Foy, assistant solicitor to Bath city council, has been appointed assistant solicitor to the South Western Gas Board at Bath. He has been with the council since August, 1954, and will take up his duties with the board on January 1, 1956. Before joining the Bath city council he was an assistant solicitor with the county borough of Preston, Lancs. There was no immediate previous occupant of Mr. Foy's new position.

Superintendent Robert McCartney, aged 43, of Lancashire constabulary, in charge of the Bolton division, has been appointed assistant chief constable of Monmouthshire in place of Mr. Neil Galbraith, who is shortly leaving to take up an appointment as chief constable of Leicester city, *see* our issue of October 15, last. Superintendent McCartney joined the Lancashire constabulary in 1930 as a cadet. In 1948 he was promoted to chief detective-inspector at headquarters in charge of a special investigation squad and in 1951 he was appointed second in command of the county C.I.D. He remained in this post for three years and in 1954 was appointed divisional superintendent in charge of the Bolton division.

Mr. Gerald A. Tranter, F.R.V.A., valuation officer, Sheffield, has been unanimously elected president of the Rating and Valuation Association for the year 1955/56 by the council of the association. He has been a member of the council since 1947.

Chief Inspector Albert Harris, of Bristol constabulary, A Division, has been promoted to the rank of superintendent (Grade 1), and has taken charge of the road traffic department of the constabulary, succeeding Superintendent Percy Sandford, who has retired. Superintendent Harris is 44 years of age. He joined the police force in 1932, was promoted sergeant in 1940, inspector in 1948 and chief inspector 2½ years ago.

Mr. R. G. Maidment, administrative assistant with Shepton Mallet, Somt., rural district council, has been appointed to the position of land charges and general clerk to Chertsey, Surrey, urban district council.

Mr. Philip H. Hare, a probation officer for Herefordshire probation area, has been appointed assistant social welfare officer in Hong Kong. This title replaces that of principal probation officer. Mr. Hare was expected to sail for Hong Kong about December 16. His first appointment as a probation officer was in 1938 when he served the petty sessional division of Spelthorne in Middlesex until 1940, when he was appointed as the probation officer for Huddersfield borough and Upper Agbrigg petty sessional division, in Yorkshire. Mr. Hare remained in this office until May, 1945, when he embarked for the Gold Coast, remaining there as principal probation officer until 1949. Since his return from the Gold Coast, Mr. Hare has served the Hereford probation area. Mr. Hare will replace Mr. D. A. E. Petersen, who died in December, 1954.

Mr. David Hunter Mitchell, formerly a Home Office trainee, took up his duties as a probation officer in the Middlesex area on November 21, 1955. Mr. Mitchell is at present working at the Feltham court.

COURT DRESS

Novelists used to find valuable material for romance in the courageous behaviour of the aristocrats who were sent to the scaffold in the days of the French Revolution. There must be few among the older generation who have not wept tears at the affecting scenes described in Charles Dickens' *Tale of Two Cities* and the Baroness Orczy's *Scarlet Pimpernel*—the crowded Revolutionary Tribunal, the rattle of the tumbril over the cobbled streets, the mob howling execrations, and, in the midst of turmoil, the Marquis or the Vicomte, cool, calm, and self-possessed, adjusting his ruffles, setting his wig to rights, and taking a pinch of snuff in the very shadow of the guillotine. Four decades of persecution, war and civil strife have swamped the regions of fiction in the angry seas of fact; readers today prefer the documentary records of recent events to the imaginings of historical novelists, and the aristocratic victim of political upheaval is no longer a fashionable subject for romance. Truth is stranger, more terrible and pathetic, than fiction in these cruel and violent times.

In this country, executions have fortunately ceased, for the last century or so, to be attended with publicity, and any exhibitionist tendencies on the part of the condemned are shrouded in official secrecy. The subject is a gruesome one, and we refrain from speculation as to the source of the conventional news-item that " the condemned man ate a hearty breakfast." No such considerations, however, apply to the actual trial; newspaper-reporters and writers of legal reminiscences are in the habit of spreading themselves, in print, on such matters as the dress and physical appearance of the accused, and his demeanour at the delivery of the verdict and the pronouncement of the sentence. There is something in these details which appeals to the dramatic sense of the participants and communicates itself to those who read the story. This method of crime-reporting has been described by Pooh-Bah in the memorable words: " Merely corroborative detail intended to add artistic verisimilitude to an otherwise bald and unconvincing narrative."

This kind of thing is far less painful when newspaper correspondents have to deal with offences of a non-capital kind. Exhibitionism is less likely to enter into the matter when the man in the dock has no ground for regarding his current appearance as the last he is likely to make in public, and his attitude in consequence will generally be less theatrical, and his considerations more utilitarian, than they would have been before the final curtain.

One such case came recently before the magistrates at Derby. A nineteen year old labourer, who pleaded guilty to stealing £1 from a gas-meter, appeared before the court with his hands deep in his pockets. The Clerk who, shocked at this disrespectful attitude, requested him to take them out, received the startling reply: " The police took my belt off me. I have got to keep my hands in my pockets to hold my trousers up." The accused remained seated during the hearing, at the end of which (we are happy to record) he was given an absolute discharge.

Sartorial considerations also entered into the case of a soldier of the Territorial Army at Wallingford, Berkshire. Brought before the magistrates on two charges of failing to report for training, the accused admitted the offence but pleaded extenuation in a novel form. His unit had issued him with a size 16 uniform; his proper size was eight. The incompatibility was manifest when the battledress blouse and trousers were held up in juxtaposition to the defendant's body and limbs, thus graphically confirming the statement that " the trousers came up to his armpits." Unlike the Colonel of Heavy Dragoons in *Patience*, who boasted:

> " When I first put this uniform on,
> I said as I looked in the glass,
> 'It's one to a million that any civilian
> My figure and form will surpass'."

this unfortunate " Terrier " told the court he was ashamed to be seen in these outsize garments; the bench, commenting that " nobody could be expected to wear a uniform like that," granted him, too, an absolute discharge.

A defendant at Bristol, described as " a smartly-dressed man," was charged with attempting maliciously to set fire to a building. He refused to give his name or to take any part in the proceedings of the court until he was " given facilities to have a shave." So saying, he " folded his arms and stared at the wall." To a further question whether he objected to a remand he would make no reply, and was remanded in custody for a week. It is possible to feel a sneaking sympathy with his attitude, for no man feels at his best when he makes an involuntary appearance, in public, with an incipient beard not of his own choosing. There was, in fact, a case in the High Court, not so long ago, when a plaintiff sued the police for wrongfully arresting him, and the evidence disclosed that one of the things that had aroused their suspicions was his wild and luxuriant growth of beard and whisker. No doubt the defendant in the Bristol case would argue that a barefaced attempt at arson ought to be tried as such.

On the civil side, the Court of the Chancellor of Oxford University has recently given judgment for a firm of tailors, against an Egyptian graduate, for the sum of £6 6*s*. 9*d*. for the supply of three shirts, one pair of socks and a pair of " briefs." The Chancellor's Court, which has a history going back 500 years, at one time had power to deal with misdemeanours committed by townsmen, students and dons; but its jurisdiction is now confined to civil matters. There is nothing in the report of the recent case to throw light on the age of the defendant; but the proceedings inevitably recall *Peters* v. *Fleming* (1840) 6 M. & W. 42; 9 L.J. Ex. 81, where a Cambridge undergraduate, under the age of 21 years, was sued for the price of four rings, a gold watch-chain, " a pair of pins," and repairs to a ring. The defendant pleaded infancy; the Judge left it to the jury to decide whether these articles were " necessaries " and was upheld on appeal. More surprising was *Jenner* v. *Walker* (1868) 19 L.T. 398, where " necessaries " for an infant defendant were held to include presents to a lady to whom he was engaged to be married. Most startling of all was *Nash* v. *Inman* (1908) 2 K.B. 1, where the Court of Appeal solemnly discussed the application of the word " necessaries " to 11 fancy waistcoats furnished by a Savile Row tailor to an infant undergraduate at Cambridge. The question, having regard to the infant's " station in life," was answered in the affirmative, though the plaintiffs failed on the ground that he was already sufficiently supplied with " necessaries " of the kind. Such sybaritism makes the wigs, ruffles and snuff-boxes of the French aristocrats appear like articles of the most mundane and functional utility.

A.L.P.

NOTICES

The first court of quarter sessions for the county of the Isle of Ely for 1956 will be held on Wednesday, January 4, at Wisbech.

The first court of quarter sessions for the borough of Southend-on-Sea, Essex for 1956 will be held on Wednesday, January 4.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Appeals—*Quarter sessions—Power to deal with appellant as if committed for sentence under Magistrates' Courts Act*, 1952, *s.* 29.

The provisions under s. 1 of the Children and Young Persons Act, 1933, renders the offender liable to a maximum term of imprisonment for two years on indictment, and for six months on summary conviction.

When a court of summary jurisdiction deals with such an offence summarily they can commit the offender to quarter sessions for sentence under s. 29 of the Criminal Justice Act, 1948, and quarter sessions would, by virtue of s. 29 (3) (*a*), be able to sentence for a maximum term of two years.

If the court of summary jurisdiction proceeds to sentence and the offender appeals to quarter sessions against such sentence, then it would seem that the two powers given to quarter sessions under s. 1 of the Summary Jurisdiction (Appeals) Act, 1933, conflict. Section 1 of the 1933 Act (re-enacting s. 31 of the Summary Jurisdiction Act, 1879) provides (as if in s. 31 (1) (vii)) that quarter sessions on an appeal may vary the decision of the court of summary jurisdiction and subs. (1) (viii) empowers quarter sessions to award any punishment, more or less severe, which the court of summary jurisdiction might have awarded. It would seem that if petty sessions have imposed the maximum sentence then quarter sessions cannot increase that sentence. Furthermore, and here it would seem that the difficulty may lie in the fact that in both cases quarter sessions would be sitting as an appeal committee, it would seem that quarter sessions has not even the powers of petty sessions in that quarter sessions is nowhere empowered to commit for the heavier sentence on indictment as could have been done by petty sessions under s. 29 of the Criminal Justice Act, 1948.

I shall be interested to have your opinion on this point and to know if you consider that quarter sessions on such an appeal:

(*a*) Could, in exercise of its powers under s. 31 (*a*) (vii) of the 1879 Act, remit the matter to the court of summary jurisdiction with the opinion that they should commit the case for sentence under s. 29 of the Criminal Justice Act, 1948, and the Magistrates' Courts Act, 1952, or

(*b*) would have any power to impose the sentence available on indictment. S. T. BONO.

Answer.

If the appeal committee considers that by reason of the appellant's character and antecedents he ought to have been committed for sentence, under s. 29 of the Magistrates' Courts Act, 1952, the committee can, in our opinion, proceed to pass sentence as if he had been convicted on indictment. There appears to be no need to go through the formality of committing the case, since the appeal committee, in so exercising the power of the magistrates' court, would be committing the appellant to itself, and he is already before the appeal committee.

We answered a similar question at p. 123, *ante*.

2.—Bastardy—*Revival of expired order.*

A bastardy order made by my court in 1941, in respect of a male child, requiring that the defendant pay a weekly sum to the complainant until the child attains the age of 14 years, expired this year, the child having attained the age of 14 years. The boy is still at school and the mother has applied to the National Assistance Board for help and they in turn have referred her to me with a view to the order being revived. It seems to me that in view of the provisions of Affiliation Orders Act, 1952, s. 2 (i), and s. 53 of the Magistrates' Courts Act, 1952, the court have power to revive the order, if required, until the boy reaches the age of 16 years. I should esteem it a favour if you would kindly let me have your comments upon this matter. SELLING.

Answer.

We agree that the order can be so revived and extended. By further extension it may be continued beyond the age of 16. *Cf. Norman* v. *Norman* [1950] 1 All E.R. 1082; 114 J.P. 299.

3.—Costs—*Salaried solicitor to local authority.*

Can you please refer me to any decision bearing one way or the other on the contention that where a whole-time local authority solicitor is remunerated solely by a fixed salary, fees (including costs) paid him by virtue of his office being lodged to the credit of his council, he is not in any litigation entitled to recover from an unsuccessful party profit costs, but only a proportion of his salary appropriate to the time devoted to the case? The basis of the contention seems to be that a local authority may not earn legal profit costs through a salaried officer. I am told there is a decision in point in the late nineteenth century, but I have not been able to find it. BLARNEY.

Answer.

We have not traced the case of the late nineteenth century, unless it be *Henderson* v. *Merthyr Tydfil U.D.C.* (1900) 1 Q.B. 434, where the decision was in the council's favour. A generation earlier, in *Galloway* v. *London Corporation* (1867) 16 L.T. 407, there was a query on the point, but earlier still, in *Raymond* v. *Lakeman* (1865) 34 Beav. 584, it was held that the party paying costs was not entitled to benefit from a contract for salaried engagement of the other party's solicitor. The latest case seems to be *R.* v. *Burnley Recorder* [1941] 1 All E.R. 549. The solicitor there was not the employee of the body which won the case, but Scott, L.J., expressly founded himself upon Channell, J., in *Merthyr Tydfil*. The Annual County Courts Practice, just published, cites both cases for the proposition that the employing corporation, company, etc., can recover its full costs, at any rate if not exceeding the salary.

4.—Landlord and Tenant—*Premises not comprising a building—Business purpose—Landlord and Tenant Act*, 1954.

In 1952 the council let a piece of land to a man who carries on another business for him to re-let to people with caravans, the number of caravans at one time being limited to 26, and to be occupied only from April to September. The agreement was for one year with option to renew, subject to termination by either party on 12 months' notice. On June 14, 1954, the council gave the tenant notice to quit and deliver up possession of the land on March 31, 1956. The council has passed a resolution that tenders be invited for the site for the months of April to September, 1956. It has been suggested that the Landlord and Tenant Act, 1954, is applicable to this site. This Act came into operation on October 1, 1954. Notice to quit was given on June 14, 1954.

Will you please advise: (1) Do you consider the notice to quit is legally in order? (2) Whether you consider the Act applies or does not apply, and give your reasons. BLANCA.

Answer.

We have seen an opinion of counsel to the effect that the word "premises" in part II of the Landlord and Tenant Act, 1954, is confined by its context (particularly s. 23 (1) and s. 30 (1) (*f*)) to premises comprising buildings. We do not, however, share this opinion; we find no context strong enough to oust a piece of land let to a tenant for some business purpose which can be carried out without buildings. We think, therefore, that the land before us is covered by part II. It seems from *Orman Brothers, Ltd.* v. *Greenbaum* [1954] 3 All E.R. 731, and *Castle Laundry, Ltd.* v. *Read* [1955] 2 All E.R. 154, that the council will have to start again.

5.—Licensing—*Justices' licence allowed to lapse—Procedure.*

Clients of ours are the owners of several licensed premises in a nearby town. For many years two of the houses have been run at a considerable loss and they now wish to surrender the licence of one of the houses and sell the premises without a licence. We are unable to discover any procedure for a surrender in such circumstances and shall accordingly be glad of your valued opinion on the following points:

1. Can a surrender of the licence be made before the date of the next annual licensing meeting?
2. If so, what is the procedure?
3. If not, can the owners merely inform the justices at the next annual licensing meeting that they do not wish to renew the licence for this house, and will the licence then automatically lapse?
4. Is notice to any other person or persons required in the event of the procedure in (3) above being followed? OSTELL.

Answer.

No formal procedure need be followed to give effect to a decision that a justices' licence shall be allowed to lapse. We suggest that a letter should be written to the clerk to the licensing justices informing him that licensed business will be discontinued on the appointed day and that no application will be made for the renewal of the licence at the next general annual licensing meeting.

6.—Local Government—*Parish council—Chairman fails to make declaration of acceptance—Validity of business done.*

The parish council at their annual meeting elected a chairman in accordance with s. 49 of the Local Government Act, 1933. The chairman did not make a declaration of acceptance of office before

the end of the meeting as provided for in s. 61 (4) of the Act, although he had made his declaration of acceptance of office as parish councillor. Four members of the parish council failed to make their declarations of acceptance of office at such meeting, and permission was not given for them to make their declarations at a subsequent meeting. At the next meeting of the parish council a resolution was passed appointing these four members to fill the four casual vacancies created by their failure to make the necessary declarations. There are no standing orders governing the procedure of the parish council. Your advice on the following points would be appreciated.

1. What effect, if any, on the business transacted at the annual meeting had the failure of the chairman to make his declaration of acceptance of office? It is assumed that it is necessary for him to make two declarations, one as parish councillor and the other as chairman, and that he could have made these declarations at any time during the meeting, although it is usual to make the declaration of acceptance of office of chairman immediately after election.

2. What is the position regarding the second meeting? The office of chairman had presumably become vacant although the supposed chairman acted as such. Can it be said that, not having a duly constituted chairman, the meeting was void and consequently the four casual vacancies on the council have not yet been filled?

3. What steps should be taken to rectify the matter? Presumably the chairman cannot call a meeting since the office is now vacant, and a meeting will have to be called by any two councillors who have made their declarations of acceptance of office. CACAM.

Answer.

1. We agree with what is said in the paragraph beginning "It is assumed," but in our opinion the chairman's failure did not affect the business done. He was not entitled to preside as chairman, but in fact he had been chosen to preside (*see* para. 3 (3) in part IV of sch. 3, and also para. 5 in part V).

2. Similarly, we consider that the business at the second meeting was effective.

3. We agree that the member who was elected chairman cannot call a meeting as chairman in pursuance of para. 2 (1) in part IV. We infer that there is no vice-chairman. Paragraph 2 (2) in part IV is only applicable when a requisition has been presented to the chairman, which cannot be done where, as here, the office of chairman is vacant. Strictly, therefore, the council can do nothing to provide itself with a chairman until the next ordinary meeting. We should not have thought this mattered, but if the members attach importance to putting the matter right before that meeting, and two of them do in fact convene a special meeting as nearly as possible according to para. 2 (2), and at this meeting a chairman is elected and makes a declaration as required by s. 61 (4), we do not think the council need fear any legal proceedings.

[This question was sent to us at the time when the matter arose, and was answered by post.—*Ed., J.P. and L.G.R.*]

7.—Magistrates—*Practice and procedure—Depositions—Two defendants on separate charges based on same facts—One set of depositions.*

Two persons are shortly to appear before my court charged respectively with (1) perjury and (2) subornation of perjury. Will it be in order for the two charges to be heard together and one set of depositions only to be taken? The perjury is alleged to be giving of false evidence in a judicial proceeding by one of the defendants. TOWDER.

Answer.

We infer from the question that the fact that false evidence was given in a particular judicial proceeding has led to two persons being charged as stated, and that some of the evidence must be common to both charges. On this assumption it will be in order for the two charges to be taken together, and for one set of depositions to be taken.

8.—Road Traffic Acts—*Registration and licensing—Vehicle on road not repairable at public expense—Exhibition of registration marks.*

A constable in this borough recently submitted a report concerning the rear identification plate of a motor car which did not comply with the requirement of the Road Vehicles (Registration and Licensing) Regulations, 1953, in that the space between two of the figures was too great. Further inquiries revealed that the street where he had seen the car parked was in fact an unadopted road, not repairable at the public expense. Practical Point 15 at 117 J.P.N. 520, has been considered and at first it would seem that it is not obligatory for a vehicle to have on it an identification mark, from which it would seem to follow that any identification mark which it was in fact displaying when on such a road need not comply with the regulations as to the size and spacing of the characters, or indeed, for that matter, any other requirement with regard to identification plates made under those regulations.

However, on looking further into the matter, it seems that the regulations are not intended to be confined to motor vehicles which are licensed or intended to be licensed to be used on a public road, because para. 33 (3) of the Registration and Licensing Regulations says: "A declaration shall be made in respect of every vehicle which is to be used exclusively on roads *not* repairable at the public expense and in respect of every vehicle which is exempt from duty by reason of the provisions of subs. (4) of s. 7 of the Act in the same manner as if the owner were applying for a licence in respect of such a vehicle, No licence shall be issued by the council in respect of any such vehicle but the council shall issue a registration book to the owner in accordance with these regulations."

It would seem, therefore, that if a registration book is to be issued in accordance with the regulations that an index mark shall be allotted, even though it is not intended to use the vehicle on a road repairable at public expense, and reg. 14 (3) appears to require that the mark shall attach to the vehicle until it is broken up, destroyed or sent permanently out of Great Britain.

In view of this I shall be obliged if you will let me know whether it makes any difference to the opinion expressed in the Practical Point to which I have referred. JUMBO.

Answer.

The 1953 regulations (22, 23, 25 and 26) prescribe the manner in which registration marks must be exhibited, etc. The penalty provision is in s. 19, Vehicles (Excise) Act, 1949. This section refers to marks and signs required to be fixed in accordance with ss. 17 and 18 and these relate to marks assigned to vehicles for which licences have been issued. By s. 19, if any mark required to be fixed is not duly fixed the driver is liable to a penalty, but there is a proviso which allows a defendant to prove as a defence that he had had no reasonable opportunity to register the vehicle *and that it was being driven on a public road for the purpose of being registered.* This seems clearly to imply that unless the vehicle is being driven on a public road no offence is committed under the section. The Act of 1949 contains the limiting definition indicated in the query (*i.e.*, that a public road is one repairable at public expense), which does not seem to have applied to the original enactment in s. 6 of the Roads Act, 1920, and may be contrasted with the definition of "road" in s. 15 of the Road Transport Lighting Act, 1927, which extends to (and indeed beyond) highways not repairable by the public. We can find nothing elsewhere making it an offence to use or drive a vehicle to which reg. 33 (3) applies without exhibiting the registration mark.

OFFICIAL AND CLASSIFIED ADVERTISEMENTS, ETC. (*contd.*)

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Town Clerk.

Town Hall,
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Amended Advertisement.

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APPLICATIONS are invited from Solicitors with sound knowledge of local government law and administration.

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Applications, stating age, qualifications and experience, and names of three referees, to be sent to me not later than Friday, December 23, 1955.

H. B. SALES,
Town Clerk.

Town Hall,
Aldershot.

Amended Advertisement.

BISHOP'S STORTFORD URBAN DISTRICT COUNCIL

Appointment of Deputy Clerk

APPLICATIONS are invited for the above appointment from Solicitors and other suitably qualified persons. Salary will be within the range £675—£900, N.J.C. Scale being applied in the event of an admitted Solicitor being appointed.

The applications of the persons who applied for the post in response to the original advertisement will be considered by the Council without need for the submission of a further application.

The appointment is subject to the N.J.C. Conditions of Service, and the Local Government Superannuation Acts, and subject to one month's notice to terminate on either side.

Applications, stating age, qualifications, and details of experience, and giving the names of two persons as referees, must reach the undersigned not later than Saturday, December 31, 1955.

G. NORMAN DRINKWATER,
Clerk of the Council.

The Council House,
Causeway,
Bishop's Stortford, Herts.

COUNTY OF SURREY

Chief Constable

APPLICATIONS are invited, preferably from persons with Police experience, for the whole-time appointment of Chief Constable for the County of Surrey (excluding Metropolitan Police area). Authorized strength of force 830.

Salary £2,240×£70—£2,450, plus travelling and subsistence allowances of £450. Housing accommodation available or annual rent allowance not exceeding £200 in lieu.

Applications, stating age, qualifications, experience, previous appointments and other relevant information, together with the names and addresses of three referees, must be received by me not later than January 3, 1956.

W. W. RUFF,
Clerk of Standing Joint Committee.

County Hall,
Kingston-on-Thames.

APPOINTMENTS

GIRLING, WILSON & HARVIE have a vacancy at their Margate Office for a recently admitted solicitor-assistant to undertake advocacy and to assist senior partner with commercial and family work.

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